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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 247.

THE BOARD OF COMMISSIONERS OF WILKES COUNTY AND JOHN H. JOHNSON, SHERIFF AND EX OFFICIO TREASURER OF WILKES COUNTY, *Appellants,*

against

W. N. COLER & COMPANY, *Appellees.*

BRIEF OF A. C. AVERY, COUNCIL FOR APPELLANTS.

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SUMMARY OF FACTS.

This suit was brought by original bill in the Circuit Court for the Western District of North Carolina, on the 22d day of February, A. D. 1899, to restrain the Board of Commissioners of Wilkes County and the *Ex Officio* Treasurer of said county from disposing of a sum of money collected to meet the interest on certain bonds of said county, the said Treasurer having been theretofore enjoined by a decree of the State Court from applying said fund to the payment of interest on said bonds, which had theretofore been declared invalid by the Supreme Court of North Carolina, in *Commissioners v. Call,* 123 N. C., 308. The temporary restraining order was granted (see printed record, page 10), and upon the hearing a decree was entered on the 14th of April, A. D. 1899, by Hon. Thomas R. Purnell, presiding in the Circuit Court for said District (see record, page 96), from which the respondents there, appellants here, appealed to the Circuit Court of Appeals for the Fourt Circuit.

The action in the State Court, entitled *Commissioners of Wilkes County et al. v. Clarence Call, Sheriff, and Ex Officio*

Treasurer of Wilkes County et al., was instituted by summons on the 23d day of December, 1897 (see record, page 32), the plaintiffs alleging in their complaint that the defendant Call was collecting and had collected certain special tax funds, which he had been paying over to himself in the capacity of Treasurer of said county, and which funds the plaintiffs were informed that he had been paying over as Treasurer to meet the interest accruing on said county bonds, and that the plaintiffs were informed that he would continue to so apply said special tax as collected, and that, if he should so apply said fund, the county would be left without remedy, under the decision of the Supreme Court of North Carolina in *Board of Education v. Commissioners*, 113 N. C., 379, at pages 388, 389 (see record, section 14 of complaint, page 37), and also record, page 74, paragraph 3, of application of defendants for appointment of receiver by State Court.

In the State Court, upon the hearing before Starbuck, Judge, on February 18, 1888, the defendant Treasurer was restrained from paying over any funds coming into his hands in satisfaction of principal or interest on said bonds (see record, page 69). At the next term of the Superior Court of Wilkes County, J. M. Welborn and J. M. Turner, as bondholders, were allowed to make themselves parties defendant (see record, page 69), and entered a motion to vacate the said order of injunction theretofore granted by Starbuck, Judge, which motion was refused upon the hearing, and said defendants Welborn and Turner appealed to the Supreme Court of North Carolina (see record, pages 71, 72, and 123 N. C., 308).

After the adverse decision upon their appeal, 123 N. C., 308, the defendants Welborn and Turner filed a petition for Writ of Error, and the case of Turner and Wellborn, plaintiffs in error, against the Board of Commissioners of Wilkes County was heard in the Court of the United States, 173 U. S., 461.

PROCEEDINGS IN THE CIRCUIT COURT OF APPEALS.

Before the appeal to the Circuit Court of Appeals for the Fourth Circuit, that Court had decided the case of *Commission-*

ers of Stanly County v. Coler, 96 Fed. Rep., 284, involving, in common with this appeal, the question whether sections 1996 to 2000 of The Code of North Carolina, empowered the county to create the bonded debt.

The Circuit Court of Appeals certified certain questions to the Supreme Court of the United States (see record, page 108), and those questions were answered in the opinion, *Wilkes County v. Coler*, 180 U. S., 506.

The Supreme Court of the United States did not pass upon two questions involved in this case:

First, Whether The Code, sections 1996 to 2000, embodying the general law, empowered Wilkes County to issue the bonds.

Second, Whether the charter of the Western North Carolina Railroad Company, as amended up to the time when the bonds were issued, empowered Wilkes County to create the bonded debt.

The sections of The Code, 1996 to 2000, are as follows:

"SEC. 1996. The boards of commissioners of the several counties shall have power to subscribe stock to any railroad company or companies, when *necessary to aid in the completion of any railroad in which the citizens of the county may have an interest.*"

"SEC. 1997. The board of commissioners of any county proposing to take stock in any railroad company, shall meet and agree upon the amount to be subscribed, and if a majority of the board shall vote for the proposition, this shall be entered upon the record, which shall show the amount proposed to be subscribed, to what company, and whether in bonds, money or other property, and thereupon the board shall order an election to be held on a notice of not less than thirty days, for the purpose of voting for or against the proposition to subscribe the amount of stock agreed on by the board of county commissioners. And if a majority of the qualified voters of the county shall vote in favor of the proposition, the board of county commissioners, through their chairman, shall have power to subscribe the amount of stock proposed by them and submitted to the people, subject to all the rules, regulations and restrictions of other stockholders in such company or companies: *Provided*, that the

counties, in the manner aforesaid, shall subscribe from time to time such amounts, either in bonds or money, as they may think proper."

"SEC. 1999. In case the county shall subscribe the amount proposed in bonds, the board of commissioners shall have power to fix the rate of interest, not to exceed the rate of eight per cent, when the interest on said bonds shall be payable, and at what place, and shall also fix the time and place of paying the interest, and shall also determine the mode and manner of the same; and also to raise by taxation, from year to year, the amount necessary to meet the interest on said bonds."

"SEC. 2000. The taxes authorized by the three preceding sections to be raised for the payment of interest or principal, shall be collected by the sheriff in like manner as other State taxes, and be paid into the hands of the county treasurer, to be used by the chairman of the board of county commissioners as directed by this chapter."

THE CHARTER OF THE NORTHWESTERN NORTH CAROLINA RAILROAD COMPANY was ratified on the 9th day of March, 1868. The charter, and all amendments thereto enacted up to the time when the bonds were issued, are as follows (see printed record, pages 10 to 18, inclusive):

1.—EXHIBIT "A."

An ordinance to incorporate the Northwestern North Carolina Railroad Company.

"SECTION 1. Be it ordained by the people of North Carolina in convention assembled, and it is hereby ordained by authority of the same: That for the purpose of constructing a railroad of one or more tracts, from some point on the North Carolina Railroad between the town of Greensboro, in Guilford County, and the town of Lexington, in Davidson County, running by way of Salem and Winston, in Forsyth County, to some point in the northwestern boundary line of the State, to be hereafter determined, a company is hereby incorporated under the name and style of the Northwestern North Carolina Railroad Company,

with a capital stock of two millions of dollars, which shall have a corporate existence as a body politic for the space of ninety-nine years, and by that name may sue and be sued, plead and be impleaded, in any court of law and equity in the State of North Carolina; and may have and use a common seal, and shall be capable in law and equity of purchasing, holding, leasing and conveying estates, real and personal, and mixed, and acquiring the same by gift or devise, so far as may be necessary for the objects herein contemplated, and no further; and said company may enjoy all other rights and immunities which other corporate bodies may lawfully exercise, and may make all necessary by-laws and regulations for its government not inconsistent with the Constitution and laws of the State of North Carolina and of the United States.

"Sec. 2. Be it further ordained, That the capital stock of said company may be created by subscriptions on the part of individuals, corporations and counties, in shares of one hundred dollars.

"Sec. 3. Be it further ordained, That books of subscription to the capital stock of said company shall be opened by the following commissioners, to-wit, I. G. Lash, J. A. Vogler, H. W. Fries, in the town of Salem; and Thomas J. Wilson, Joseph Masten, R. A. Wilson, in the town of Winston, and by such other persons and in such other places as the aforesaid commissioners may direct; and that ten days' notice of the opening of said books shall be given in one or more newspapers of this State; and, furthermore, that the said commissioners, or any four of them,

may, at any time after said books have been kept open for
13 the space of thirty days, and the sum of thirty thousand

dollars has been subscribed to the capital stock of said company, and five per cent paid thereon, have power to call together the subscribers to said stock for the purpose of completing the organization of said company; and the said subscribers shall be, and are hereby declared, incorporated into a company by the name and style of the Northwestern North Carolina Railroad Company; and the said company may, from time to time, receive other subscriptions to its capital stock as it may deem proper.

"Sec. 4. Be it further ordained, That the company may hold

annual meetings of its stockholders, and oftener if necessary, and at its organization and the annual meetings subsequent thereto, ten directors shall be elected to hold office for one year, or until their successors shall be elected; and any of said meetings shall have power to make or alter the by-laws of the company: *Provided,* that in all such meetings of the stockholders a majority of all the stock subscribed shall be represented in person or by proxy, which proxy shall be verified in the manner prescribed by the by-laws of the company; and each share thus represented shall be entitled to one vote on all quesitons; and that it shall be the duty of the directors of the company to elect one of their own number as president of said company, and to fill all vacancies in their board.

"SEC. 5. Be it further ordained, That after the organization of said company and the election of the president and other necessary officers, the officers so elected shall proceed, under the advice of the directors, to locate the eastern terminus of the Northwestern North Carolina Railroad, and shall proceed to construct said road, with one or more tracks, as speedily as practicable, in sections of five miles each, to the towns of Winston and Salem, in Forsyth County, which portion of said railroad, when completed, shall constitute its first division: *Provided,* that if the distance from the nearest section to the towns of Winston and Salem be less than five miles, the same shall be considered a section.

"SEC. 6. Be it further ordained, That said company shall have the same power to call for and enforce the payment of stock subscribed as was heretofore granted to the North Carolina Railroad Company, by their charter of incorporation; and shall have power to condemn land for the use of the company, when a contract of purchase can not be made with the owner
14 thereof, to the same extent and in the same manner and under the same rules, regulations and restrictions as the said North Carolina Railroad Company were authorized to do by their act of incorporation.

SEC. 7. Be it further ordained, That all contracts made and entered into by the president or superintendent of the company, whether with or without seal, shall be binding upon the com-

pany; and the president shall, under the instruction of the board of directors, issue certificates of stock to the stockholders, which shall be transferable in the manner prescribed by the by-laws of the company.

"SEC. 8. Be it further ordained, That whenever the president and chief engineer of said company shall certify to the Governor of the State that the grading of any of the sections of said road, as mentioned in section 5 of the ordinance, is completed and ready for the superstructure, he shall direct the public Treasurer of the State to loan, in behalf of the State, to the said company, the sum of fifty thousand dollars in coupon bonds; and in like manner the Governor will direct similar loans to be made to the company upon the completion of the grading of each and every section, until the first section is graded entire; and said company shall set aside the receipts of the road over and above its annual expenses as a sinking fund to pay the said debts and interests, the whole amount of said debt and interest to be paid before the said company shall order any dividends on the stock of the company; and that said sinking fund so produced shall be semi-annually paid into the public treasury.

"SEC. 9. Be it further ordained, That no part of said loan or bonds shall be delivered to said company until the president and directors thereof shall execute and deliver to the Governor of the State a mortgage on the entire road and its property, conditioned to save the State harmless against the loss of both principal and interest of said loan.

"SEC. 10. Be it further ordained, that the coupon bonds loaned as aforesaid, shall be signed by the Governor, countersigned by the Treasurer, and sealed with 'the great seal of the State,' bearing six per cent interest, the principal payable at the end of thirty years from the date thereof, and the coupons for the interest payable semi-annually in such form as the public Treasurer may direct.

"SEC. 11. Be it further ordained, That the company may have the exclusive right of transporting persons and freight upon said road, at such rates of charges as the board of directors may fix, and may have power to farm or lease the same to any person or persons or corporation.

"SEC. 12. Be it further ordained, That the stockholders of said company may pay the stock subscribed by them either in money, labor or material for constructing said road, as the board of directors may determine, and that all counties or towns subscribing stock to said company shall do so in the same manner and under the same rules, regulations and restrictions as are set forth and prescribed in the act incorporating the North Carolina and Atlantic Railroad Company, for the government of such towns and counties as are now allowed to subscribe to the capital stock of said company.

"SEC. 13. Be it further ordained, That the company shall have power to construct branches of said road, one of which shall run from the towns of Winston and Salem, by way of Mount Airy, in Surry County, to the line of the State of Virginia.

"SEC. 14. Be it further ordained, That this ordinance shall be in force from and after its passage.

"Ratified this 9th day of March, A. D. 1868.

"CALVIN J. COWLES, *President.*

"T. A. BYRNES, *Secretary.*"

2—EXHIBIT "B."

An act ratifying and confirming the charter of the Northwestern North Carolina Railroad Company.

"SECTION 1. The General Assembly of North Carolina do enact, that an ordinance entitled "An ordinance to incorporate the Northwestern North Carolina Railroad Company," ratified the 9th day of March, A. D. 1868, be, and the same is hereby, re-enacted, ratified and confirmed, and all acts and things heretofore done under the provisions of said ordinance are hereby ratified and confirmed.

"SEC. 3. That all the rights, powers and authorities conferred or purporting to be conferred by said ordinance incorporating the Northwestern North Carolina Railroad Company on the Justices of the Peace of Forsyth County, or of the County Court of said county, be, and the same are hereby, conferred on the Commissioners of said county.

"SEC. 3. That the Commissioners of the county of For-
16 syth are hereby invested with full powers and authority to levy, from time to time, such tax as may be sufficient to pay the subscriptions made by said county to the capital stock of the Northwestern North Carolina Railroad Company, and any interest due thereon, or to liquidate any debt created by said county in borrowing money to pay such subscription stock.

"Ratified the 11th day of August, A. D. 1868."

(Private Laws of the Special Session of 1868, of the General Assembly of North Carolina.)

3.

CHAPTER 26.

"An Act entitled an act to amend an ordinance of the Convention, entitled 'An ordinance to incorporate the Northwestern North Carolina Railroad Company.'

"The General Assembly of North Carolina do enact:

"SECTION 1. That for the purpose of aiding in the construction of the Northwestern North Carolina Railroad from Salem, in Forsyth County, to Mount Airy, in Surry County, whenever the president and chief engineer of the company shall certify to the Governor of the State that five miles of this division of the road from Salem to Mount Airy shall be graded and ready for the superstructure, and that when one hundred thousand dollars solvent additional security shall have been taken, and five per cent of the same shall have been paid to the treasurer of the company, the Governor shall direct the Public Treasurer of the State to loan to the company the sum of ten thousand dollars per mile in coupon bonds, principal payable at the end of thirty years, and in like manner the Governor shall direct the Public Treasurer to loan the sum of ten thousand dollars per mile to said company for each and every section of five miles, when the presi—

"SEC. 2. That no part of said loan or bonds shall be delivered to said company until the said company shall have executed and

delivered to the Governor of the State a first mortgage of entire road, with all its property and franchises, so conditional that if the said company shall fail to pay the interest on said debt semi-annually, or shall fail to set apart annually for a sinking fund to pay the principal of said debt, all the receipts of the road over and above its annual expenses, after the time when the principal shall have been paid out of the sinking fund already provided for in said ordinance to secure payment of a loan therein directed to be made, then, and in default of either of these conditions, the State may foreclose the mortgage and enter upon and take possession of the road and all its property, and sell the same for the payment of said debt and interest.

"SEC. 3. That portion of the Northwestern North Carolina Railroad extending from Salem to Mount Airy shall be known as the second division of the Northwestern North Carolina Railroad.

"SEC. 4. This act shall be in force from and after its ratification.

"Ratified the 21st day of August, A. D. 1868."

4.

(Acts of 1868-'69, Chapter 32.)

CHAPTER 32.

"An Act to repeal an act entitled an act to amend an ordinance of the Convention, entitled an ordinance to incorporate the Northwestern North Carolina Railroad Company, and to substitute the following provision for said act:

"The General Assembly of North Carolina do enact:

"SECTION 1. That for the purpose of aiding in the construction of the *Mount Airy division* of the Northwestern North Carolina Railroad, from Salem, in Forsyth County, to Mount Airy, in Surry County, and *the first division of said road from Greensboro to Salem and Winston,* when the president and chief engineer of said company shall certify to the Governor that one hundred and fifty thousand dollars in solvent subscriptions have been taken in said company, and five per cent shall have been

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paid into the treasury of said company on said subscriptions, the Governor of the State shall direct the Public Treasurer to loan the said company the sum of twenty thousand dollars per mile, in coupon bonds of the State, on the aforesaid divisions, bearing six per cent interest per annum, payable semi-annually, principal payable at the end of thirty years, said bonds to be of the denomination of one thousand dollars, signed by the Public Treasurer, countersigned by the Governor, and bearing the great seal of the State.

"SEC. 2. *That for the purpose of aiding in the construction of the Yadkin Valley division of said railroad, running from Salem and Winston, by way of Lewisville, thence by way of Yadkinville,* in the county of Yadkin, or within one and a half miles thereof, thence up the valley of the Yadkin to the foot of the Blue Ridge, in the county of Caldwell, the sum of twenty thousand dollars per mile on said division shall be loaned by the State to said company, to be paid in the coupons of the State at par, to be issued of the same denomination and in the same manner as provided for issuing bonds mentioned in the first section of this act, as soon as the president and chief engineer of said company shall certify to the Governor of the State that one hundred thousand dollars in solvent subscriptions shall be made on said valley division to the capital stock of said company, and five per cent paid thereon to the company.

"SEC. 3. That no part of said loan or bonds shall be delivered to said company until said company shall have executed and delivered to the Governor of the State a first mortgage of the entire road, with all its property and franchises, so conditioned that if the said company shall fail to pay the interest on said debt semi-annually, or shall fail to set apart annually, for a sinking fund, to pay the principal of said debt, a dividend of three and one-third per cent on the stock of said company, if so much shall be declared per annum, over and above its annual expenses, after the time when the principal shall have been paid out of the sinking fund, already provided for in said ordinance, to secure the payment of a loan therein directed to be made, then, and in default of either of these conditions, the State may foreclose the mortgage and enter upon and take possession of the

road and all its property, and shall sell the same for the payment of said debt and interest.

"SEC. 4. That for the purpose of raising a sum sufficient to pay the interest of the bonds of the State herein authorized, at the rate of twenty thousand dollars per mile of said road, a special tax of one-twentieth of one per cent of the real and personal property of the State, to be annually levied and collected, until the maturity of said bonds, is hereby imposed; and the residue of the fund derived from said tax for the payment of interest on the aforementioned State bonds, if any, shall be used as a sinking fund for the special redemption of the bonds of the State to said company to be issued.

"SEC. 5. That the company, notwithstanding any other provisions of this act or the charter of said company, shall have the right, at any time, to pay in any of the bonds or other indebtedness of the State, at par, the obligations and liabilities of the company to the State, arising from the foregoing loans or any other loans of State bonds.

"SEC. 6. *Provided*, that on or before the day upon which the first coupon of the bonds authorized to be issued by this act shall become due, the president of the above named railroad company shall pay to the Public Treasurer, either in cash or in matured coupon bonds upon which the Public Treasurer is made to pay the interest under this act, the sum of sixty thousand dollars; and on or before the day upon which the second coupon of the bonds authorized by this act shall become due, the president of the above named railroad company shall pay, in like manner, the sum of sixty thousand dollars; and on or before the day upon which the third coupon as aforesaid shall become due, the president above named shall pay to the Public Treasurer, in like manner, the sum of forty thousand dollars; and on or before the day upon which the fourth coupon as aforesaid shall become due, the president above named shall pay to the Public Treasurer, in like manner, the sum of twenty thousand dollars.

"SEC. 7. *Provided further*, that of the bonds authorized to be issued under this act, three hundred and sixty thousand dollars shall be retained by the Public Treasurer as collateral security for the faithful performance of the conditions of the pre-

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ceding section; and that upon the payment of the first sixty thousand dollars as aforesaid, the Public Treasurer shall be authorized to deliver to said railroad company one hundred and twenty thousand dollars of the above named three hundred and sixty thousand dollars of bonds; and upon the payment of the succeeding amounts named in said section, the Public Treasurer is authorized to deliver bonds to the amount of double the sum paid, until all said bonds are delivered to said railroad company: *Provided also,* that at the expiration of two years from the date of the first coupon of the bonds authorized in this act, the Public Treasurer shall be authorized to issue said railroad company an additional amount of bonds equal at their par value to the amount paid in cash by said company in behalf of the State according to the provisions of section six of this act, said bonds to be in all respects similar to those authorized to be issued by this act.

"SEC. 8. That all laws and ordinances coming in conflict with the foregoing provisions of this bill are hereby repealed.

"SEC. 9. This act shall be in force from and after its ratification.

"Ratified the 3d day of February, A. D. 1869."

5.

(Acts 1869-'70, Chapter 100.)

"An Act to enable the Northwestern North Carolina Railroad Company to complete the first division of its road."

"The General Assembly of North Carolina do enact:

"SECTION 1. For the purpose of supplying funds to enable the Northwestern North Carolina Railroad Company to complete and equip its road to such extent as may be necessary, the said company shall have the power to borrow money by the issue and sale of bonds, or other evidences of debt, authenticated in such manner as the president and directors of said company may deem best, in sums not less than five hundred dollars, said bonds bearing a rate of interest not exceeding eight per cent per annum, payable semi-annually, principal and interest payable at such time and place as said president and directors may

select, the bonds so issued not to exceed three hundred thousand dollars.

"SEC. 2. To secure the payment of such bonds and other evidences of debt issued as aforesaid, and the interest thereon, the said Northwestern North Carolina Railroad Company may execute and deliver mortgage deeds or deeds in trust, signed by the president and countersigned by the secretary of the said company, conveying its franchise and property of whatever kind now or hereafter to be held, including its road-bed, superstructure, choses in action and real and personal estate, to the holder of said bonds, or to such parties as such president and directors may select, in trust for them, and the deeds so executed and registered in the county of Forsyth, which registration shall be sufficient for all purposes, shall have priority over any lien or other claim made by the State on the subject matter so conveyed, whether now existing or hereafter to exist under laws heretofore enacted, it being the intent and meaning of this act that the State shall have the rights and be in the position of a second mortgagee, subordinated to the lien created by the trust or mortgage deed aforesaid.

"SEC. 3. All acts of the General Assembly authorizing the appropriation of bonds of this State in aid of the first division of said railroad company are hereby repealed, the validity of preceding laws not to be by such repeal affected, but such laws to be in full force.

"SEC. 4. This act shall be in force from and after its ratification.

"Ratified the 22d day of March, A. D. 1870."

6.

(Acts 1870-'71, Chapter 178.)

"An Act to enable the Northwestern North Carolina Railroad Company to complete their road to Salem."

"WHEREAS, The State, by her appropriations and other pledges, did induce and encourage the Northwestern North Carolina Railroad Company, chartered by ordinance of the Convention in the year one thousand eight hundred and sixty-eight, to

lay out their line of railroad, and by private subscriptions to grade and construct their road-bed, with bridges, cross-ties, and some depot buildings, as far as the towns of Winston and Salem, in Forsyth County, and by the withdrawal of such aid by the State, the said company are without present means of completing said road; and whereas, it is greatly to the interests of the State, and especially the fertile region thereof through which the projected line of said road will pass, that the same shall be at once completed to Salem, and as soon thereafter as practicable to the Tennessee line:

"The General Assembly of North Carolina do enact:

"SECTION 1. That the said Northwestern North Carolina Railroad Company shall have the right, and their charter is hereby so amended as to enable them at any time within two (2) years after the ratification of this act, to unite such consolidation with any other railroad company whose line, now built or to be built, under any existing charter, connects with, or may under such existing charter connect with, the line of the said Northwestern North Carolina Railroad Company, and who will agree and contract with the said Northwestern North Carolina Railroad Company to build and complete the same from Greensboro to Salem, in Forsyth County, without delay.

"SEC. 2. That for the purpose of carrying into effect the provisions of the foregoing section, it shall be lawful for any of the said railroad companies which connect, or may connect as aforesaid, with the said Northwestern North Carolina Railroad Company, and the respective charters of such roads are hereby so amended as to enable them, at a special meeting of the stockholders called for such purpose, or at any regular meeting after the ratification of this act, to consider and agree to propositions of the said Northwestern North Carolina Railroad Company, to unite and consolidate with such company, as provided for in section one of this act, and to contract with the said Northwestern North Carolina Railroad Company for such completion of their road from Greensboro to Salem, as aforesaid, such contract, if accepted by both contracting parties, to be signed by the presidents of such contracting companies in duplicates, one to be preserved by each of said companies.

"SEC. 3. That upon the execution of such contract and the completion of the said road from Greensboro to Salem, according to the terms of the contract, all the powers, rights, privileges, immunities and franchises of the said Northwestern North Carolina Railroad Company shall be transferred to, conferred upon and vest in the said connecting railroad company contracting as aforesaid with the said Northwestern North Carolina Railroad Company: *Provided, however,* that the holders of certificates of stock in the said Northwestern North Carolina Railroad Company, who have fully paid up their subscriptions thereto, shall be equal shareholders in the consolidated company.

"SEC. 4. That all laws, charters and clauses thereof inconsistent with this act are hereby repealed.

"SEC 5. This act shall take effect from its ratification.

"Ratified the 31st day of March, A. D. 1871."

7.

(Acts 1871-'72, Chapter 25.)

"An Act to amend the charter of the North (Western) Carolina Railroad Company, and for other purposes.

"WHEREAS, The Northwestern North Carolina Railroad Company executed and delivered two mortgages, one dated the sixteenth day of August, *Anno Domini* one thousand eight hundred and seventy, and the other dated the twenty-sixth day of June, one thousand eight hundred and sixty-nine, conveying its entire road, property and franchises, in the manner, upon the conditions, and for the purposes provided for by an ordinance of the Convention of the State of North Carolina, ratified the ninth day of March, one thousand eight hundred and sixty-eight, and by an act of the General Assembly of North Carolina, ratified the third of February, one thousand eight hundred and sixty-nine; and whereas, all the bonds loaned to said company by the State, under authority of said act of the General Assembly, have been returned to the Treasurer of the State, and all the bonds authorized to be loaned to said company by the State by said ordinance of the Convention yet remain in the Treasury of the State, although the company is legally entitled to them; and

whereas, it is necessary that said company should have power to raise money for its purposes; now, therefore,

"The General Assembly of North Carolina do enact:

"That whenever the president of the said Northwestern North Carolina Railroad Company shall certify to the Treasurer of the State of North Carolina that this act has been accepted as an amendment of the charter of said company, said Treasurer shall forthwith cancel both of the mortgages aforesaid, and deliver the same so cancelled to the president of said Northwestern North Carolina Railroad Company, and that said Treasurer do also cancel the bonds or other evidences of debt, signed, sealed and ready for delivery under any part of any ordinance of the Convention or act of the General Assembly of North Carolina making appropriations or providing for loans to the said railroad company, and file the same so cancelled among the archives of his office.

"SEC. 2. That the said company be, and it is hereby, authorized to issue, sell or otherwise dispose of for its purposes, its bonds or other evidences of debt, to an amount not exceeding twenty thousand dollars per mile of its road, bearing interest at a rate not exceeding eight per cent per annum, and to secure the same by one or more mortgages or deeds of trust upon its road, property, real and personal franchises, rights and privileges now held, or which may hereafter be acquired, in such manner and form as the board of directors of said company may determine. And the registration of any mortgage or deed, executed in accordance with this act, in the county of Forsyth, in the State of North Carolina, shall have the same effect as if such mortgage or deed were registered in every county in said State in which any of the property conveyed may be, any law to the contrary notwithstanding.

"SEC. 3. The said Northwestern North Carolina Railroad Company is also hereby empowered to contract with any corporation or person to complete the whole or any part of its railroad, and to issue to such party shares of its capital stock, and to use for the purpose the bonds or evidences of debt of said company hereinbefore authorized to be issued, upon such terms and con-

ditions as may be agreed upon by the contracting parties: *Provided, however*, that the said company shall, in no event, issue shares exceeding the amount of its capital stock as fixed by law.

"SEC. 4. All parts of ordinances of the convention and of acts of the General Assembly of North Carolina making appropriations in behalf of, or providing for subscriptions or loans to said company by the State of North Carolina, and all parts of such ordinances as are inconsistent with this act are hereby repealed.

"SEC. 5. This act shall be in force from and after its ratification.

"Ratified the 3d day of January, A. D. 1872.

"STATE OF NORTH CAROLINA,
"OFFICE OF SECRETARY OF STATE,

"RALEIGH, February 28, 1872.

"I hereby certify that the dates mentioned in the preamble of the above act were inserted in accordance with "An act to repeal an act passed at the present session and ratified on the fifteenth day of January, one thousand eight hundred and seventy-two, and entitled an act supplementary of an act to amend the charter of the Northwestern North Carolina Railroad Company, and for other purposes, and to fill certain blanks," ratified January 23, A. D. 1872. "H. J. MENNINGER,
"Secretary of State."

8.

(Chapter 47, Laws 1871-'72.)

"An Act supplementary to an act entitled 'An act to amend the charter of the Northwestern North Carolina Railroad Company, and for other purposes.'

"The General Assembly of North Carolina do enact:

"SECTION 1. That the aforesaid 'act to amend the charter of Northwestern North Carolina Railroad Company, and for other purposes,' passed at the present session, be amended as follows, to-wit, by striking out from the preamble thereof the first para-

graph thereof, beginning with the word 'whereas' and ending the words 'February, eighteen hundred and sixty-nine,' and insert the following: 'Whereas, the Northwestern North Carolina Railroad Company executed and delivered to the State a mortgage, dated the twenty-sixth day of June, eighteen hundred and sixty-nine, conveying its entire road, property and franchises in the same, upon the conditions and for the purposes provided for by an act of the General Assembly of North Carolina, ratified the third day of February, eighteen hundred and sixty-nine.'

"SEC. 2. That section one of said act be also amended by striking out, in line seven, the words 'both of the mortgages aforesaid,' and inserting in the room and stead thereof the words 'the said mortgage.'

"SEC. 3. That this act be in force from its ratification.

"Ratified the 15th day of January, A. D. 1872."

3—EXHIBIT "E."

"An Act to amend the charter of the Northwestern North Carolina Railroad for the construction of a second division from the town of Winston and Salem, in Forsyth County, up the Yadkin Valley, by Wilkesboro, to Patterson's factory, Caldwell County.

"The General Assembly of North Carolina do enact:

"SECTION 1. That section thirteen of chapter seventeen of the ordinance of the Convention of one thousand eight hundred and sixty-eight, ratified the ninth day of March, one thousand eight hundred and sixty-eight, be amended by adding the words 'and one of which shall be constructed from the town of Winston and Salem, up the valley of the Yadkin, by way of Jonesville and Wilkesboro, in the county of Wilkes, to Patterson's factory, in the county of Caldwell, which branch shall be known as second division.'

"SEC. 2. That said ordinance be amended by inserting a new section between sections thirteen and fourteen, to read as follows: 'That the Penitentiary Board is authorized and directed to

farm out to (the) president and directors of said company, for the purpose of constructing the second division of said road, two hundred able-bodied convicts to work on the construction of said railroad, but the said convicts shall be at all times under the supervision and control, as to their government and discipline, of a supervisor, who shall be appointed by the Governor upon the recommendation of said railroad company: *Provided*, that there shall be an estimate made of the net value of the labor done by said convicts on the road of said company, to be fixed on a just and equitable basis by the president of said company and a person appointed by the Governor on the part of the State, and the net value of labor shall be a first lien on all property and franchises of said second division of said railroad: *Provided further*, that the State shall not be at any expense for the feeding, clothing and other care of said convicts.'

"Sec. 3. Nothing in this act shall be construed to interfere with the convicts assigned to any road in which the State has an interest.

"Sec. 4. That any township or city, town, county or
18 other municipal corporation of this State, shall have power and authority to subscribe for and take any number of shares of capital stock of said company that a majority of the voters of such township or city, town, county or other municipal corporation may elect to take therein. That upon (the) request of twenty residents and taxpayers of any such township or city, town, county or other municipal corporation of this State, the municipal corporation (and in case of township, the Justices of the Peace of such township), shall determine the number of shares in the said company proposed to be taken by such township or city, town, county or other municipal corporation, and shall appoint a day on which an election shall be held in such township or city, town, county or other municipal corporation, in the manner prescribed by law for holding elections, at which election the legally qualified voters of such township or city, town, county or other municipal corporation, shall be entitled to vote for or against such subscription, the legally qualified voters favoring such subscription to vote ballots written or printed 'Railroad,' those opposing such subscription to vote 'No Railroad.' The election herein provided for shall be

held at the usual voting places for such townships or cities, towns, counties or other municipal corporations (and, in case of townships, by Justices of the Peace of such townships), in the same manner that persons are appointed for holding other elections. And the returns thereof shall be made and the result thereof announced as in other elections prescribed by law: *Provided*, that in case of townships, the Justices of the Peace of such township, for carrying out the purpose of this act, shall be vested with all the powers vested in the boards of commissioners and Justices of the Peace of counties as to the manner of appointing the persons to hold elections, and so forth, by law for the purpose of holding other elections, and townships shall have corporate powers for the purpose of this act. If the result of any such election shall show that a majority of the qualified voters of any township or city, town, county or other municipal corporation favor the taking of the amount of stock so voted for in such election, then the authorities who by this act are empowered to determine what amount of stock shall be taken, shall subscribe the amount of stock so voted for in said company, and shall have power to levy and collect taxes for that special purpose to pay for the said stock in installments as the same may become due, or, in case it shall not be deemed best to collect taxes to pay by taxation such subscription for stock, then such township or city, town, county or other municipal corporation shall have power to issue bonds for the purpose of raising
19 money to pay for such subscription, and shall provide for the payment of interest upon said bonds, and also for the payment of said bonds when they become due: *Provided, however*, that any township, county or other corporate authorities who shall issue any bonds or issue any obligations in behalf of this road shall be required to commence as soon as said obligations are assumed to provide a sinking fund that shall be sufficient to liquidate said bonds or obligations at maturity: *Provided further*, that nothing in this charter shall be construed to exempt said railroad from taxation.

"Sec. 5. That this act shall be in force from and after its ratification.

"Read three times in the General Assembly and ratified the 20th day of February, A. D. 1879."

10.—EXHIBIT "G."

"An Act to authorize the Northwestern North Carolina Railroad Company to extend its road and to build branches thereof.

"The General Assembly of North Carolina do enact:

"SECTION 1. That it shall be lawful for the Northwestern North Carolina Railroad Company to extend and construct its line of road, or a branch thereof, to commence at or near Winston, in the county of Forsyth, through the counties of Forsyth, Davidson, Yadkin, Davie, Rowan and Iredell, or any or either of them, to Statesville, or some other point on the Western North Carolina Railroad, and may build and operate additional branches thereto, or from its present main line to any important mines or manufactories in any of said counties, or counties adjacent to them: *Provided,* that nothing contained in this act shall operate to be construed so as to prevent or interfere with the construction of the North Carolina extension of the Virginia Midland Railroad from Danville, Virginia, via Winston, Forsyth County, and Mocksville, Davie County, to some point on the Atlantic, Tennessee and Ohio Railroad, in Iredell County; but said company is hereby authorized to build said road under the organization and consolidation heretofore made by the stockholders and directors of the consolidated line composing the North Carolina extension.

"SEC. 2. That to provide the means in whole or in part for this purpose, the said company may receive subscriptions in money, labor, property, or otherwise, as the said company may agree, and may mortgage or otherwise pledge its property and franchises, and the work constructed, or to be constructed, with the franchises and rights connected therewith.

"SEC. 3. That any corporation, county, city, town or township interested therein, may subscribe to stock for said purpose,
or otherwise contribute to such work in such manner and in
21 such amount as shall be determined by the proper authori-
ties of such corporation, county, city, town, or township, and agreed on with the said Northwestern North Carolina Railroad Company.

"SEC. 4. This act shall be in force from and after its ratification.

"In the General Assembly read three times, and ratified this the 2d day of March, A. D. 1881.

11.

"1. Statutes bearing on the authority to issue bonds.

"Chapter 136 of the Laws of N. C., 1852.

"Chapter 17 of Ordinances of Constitutional Convention of 1868.

"Chapter 33 of the Laws of 1868 and 1869.

"Chapter 90 of the Laws of 1868 and 1869.

"Chapter 100 of the Laws of 1869 and 1870.

"Chapter 178 of the Laws of 1870 and 1871.

"Chapter 25 of the Laws of 1871 and 1872.

"Chapter 47 of the Laws of 1871 and 1872.

"Chapter 140 of the Laws of 1872 and 1873.

"Code of North Carolina, section 1967, subsection 10.

UNDER THE ESTABLISHED RULE FEDERAL COURTS MUST LEAN TOWARD AN AGREEMENT OF VIEWS OF THE STATE COURT, BECAUSE ON THE FIRST HEARING OF THE STANLY COUNTY BOND CASE, INVOLVING ONLY THE CONSTRUCTION OF THE CODE, SECTIONS 1996 TO 2000, THE CIRCUIT COURT OF APPEALS, IN COMMISSIONERS v. COLER, 96 FED. REP. 284, AGREED WITH THE STATE COURT IN HOLDING THAT SAID SECTIONS WERE INSUFFICIENT TO EMPOWER A COUNTY TO ISSUE BONDS, ALL OF THE JUDGES CONCURRING, WHILE ONLY A MAJORITY CONSENTED ON REHEARING TO OVERRULE THAT OPINION.

It has been held in this case, that Federal Courts must follow the construction given to section 14, Article 2, of the Constitution, by the State Court and they ought to incline to follow the construction placed upon the sections of The Code, in *Commissioners v. Snuggs,* and since affirmed in *Commissioners v. Call,*

123 N. C., 308, and *Commissioners v. Payne*, 123 N. C., 432, and other cases.

Wilkes County v. Coler, 180 U. S., 506.

The established rule of the Federal Courts is to resolve all reasonable doubts in favor of the construction placed by the State tribunals upon their own statutes.

"The construction by the courts of a State of its constitution and statutes is, as a general rule, binding on the Federal Courts. We may think that the Supreme Court of a State has misconstrued its constitution or its statutes, but we are not at liberty, therefore, to set aside its judgments. That Court is the final arbiter as to such questions. In *Claiborne County v. Brooks*, 111 U. S., 400, 410 (28—470, 474), it was said: 'It is undoubtedly a question of local policy with each State, what shall be the extent and *character of the powers which its various political and municipal orgnizations shall possess; and the settled decisions of its highest courts on this subject will be regarded as authoritative by the courts of the United States;* for it is a question that relates to the internal constitution of the body politic of the State.' (See also *Burgess v. Seligman*, 107 U. S., 20, 33; *Butcher v. Cheshire R. Co.*, 125 U. S., 555; *Detroit v. Osborne*, 133 U. S., 492; *South Branch Lumber Co. v. Ott*, 142 U. S., 622; *Kaukauna Water Power Co. v. Green Bay and M. Canal Co.*, 142 U. S., 254; *McElvaine v. Brush*, 142 U. S., 155; *Stutsman County v. Wallace*, 142 U. S., 293, quoting *Norton v. Shelby County*, 118 U. S., 425 and *Gromley v. Clark*, 134 U. S., 338; *Morley v. Lake Shore M. S. R. Co.*, 146 U. S., 162; *Bauserman v. Blount*, 147 U. S., 647; *May v. Teney*, 148 U. S., 60; *Baltimore and O. R. Co. v. Baugh*, 149 U. S., 368, 373; *Lewis v. Monson*, 151 U. S., 545; *Balkam v. Woodstock Iron Co.*, 154 U. S., 177, quoting *Leffingwell v. Warren*, 67 U. S., 2 Black., 599, 603.)"

Where it is found that no construction had been given to a statute by the State court when the transaction was entered into, the Federal courts *"will lean toward an agreement of views with*

the State courts, if the question seems to them balanced with doubt."

Burgess v. Seligman, 107 U. S., 17, 38.

It is true that all courts incline to hold commercial paper, in the hands of innocent purchasers for value, valid, but nowhere, except in the concurring opinion of Judge Boyd and in the brief of Mr. Price, have we found an intimation that in order to uphold municipal bonds, "if it can do so under any circumstances" or "if it is possible to do so," a Federal court must lean against instead of in favor of a ruling by a State tribunal that the creation of a debt by a municipality was *ultra vires.* Justice Gray, in *Louisville R. Co. v. Louisville Trust Co.*, 174 U. S., 573, 574, said, quoting 10 Wall., 604:

"Where a party deals with a corporation in good faith, *the transaction is not ultra vires and he is unaware of any defect in authority*, and there is nothing to excite suspicion of such defect or irregularity, the corporation is bound by the contract, although such defect or irregularity in fact exists."

THE CONTENTION OF THE PETITIONERS IS THAT THE AUTHORITY TO SUBSCRIBE WAS LIMITED TO A CERTAIN CLASS OF COUNTIES. IF A COUNTY WAS NOT A DONEE OF SUCH POWER BY REASON OF BELONGING TO SUCH CLASS, IT COULD NOT CONFER SUCH AUTHORITY ON ITSELF BY RECITATIONS EITHER IN BONDS OR IN THE MINUTES OF ITS GOVERNING OFFICIALS.

If the Legislature had not intended to restrict the power of "the boards of commissioners of the several counties" to aid railroads to those in which the citizens of the county may have an interest, it would have *omitted the qualifying clause "when necessary to aid in the completion of a road in which the citizens of the county may have an interest."* and have allowed any county to subscribe stock "to any railroad company or companies." The qualifying words are surplusage, according to the construction of the circuit court of appeals.

If the clause descriptive of the company to which the subscriptions might be made is not meaningless and mere surplusage, it confers power only on a certain class of counties. *If a county not authorized attempts to subscribe, it is acting ultra vires.* Whether there is anything in the transaction to excite suspicion or not, a purchaser is bound to look to the power of a municipality to issue bonds, and must lose when he buys bonds issued without legislative authority.

The language of Code, section 1996, relied upon as authority for the issue of the bonds, is as folows:

"The boards of commissioners of the several counties shall have power to subscribe stock to any railroad company or companies when necessary to aid in the completion of any railroad in which the citizens may have an interest."

What is meant by the words "any railroad in which the citizens of a county may have an interest?" The petitioners submit that the courts of America and the British Empire have uniformly construed the word "interest" in such connections to mean "pecuniary interest" in the thing referred to—here, in the railroad.

DEFINITION OF THE WORDS "INTEREST" OR "INTERESTED."

In construing a statute prohibiting any member of a council from having a direct or indirect interest in a contract of the corporation, the Supreme Court of Michigan, in *Swedly v. Kirby*, 79 N. W. R., 188, said:

"This indicates that a pecuniary interest was intended. Anderson defines interest as such relation to the matter in issue as creates a liability to pecuniary loss or gain from the event of a suit."

Taylor v. Highway Commissioners, 88 Ill., 527.
Northampton v. Smith, 11 Met. (Mass.), 395.

In a case where the question was whether a salaried employe

of a firm of contractors was interested in the contracts of the firm, the Pennsylvania court said:

"The word interested does not mean anything but pecuniary interest, and of this there is no evidence."

Dunlap v. Philadelphia, 13 W. N. C. (Pa.), 98.

The Supreme Court of Illinois, in passing upon the questions whether the State had an interest, within the meaning of the statute in a *quo warranto* proceeding to try title to an office, said: "The interest which a State must have in such a cause is a *substantial interest as a pecuniary interest.*"

McGrath v. People, 100 Ill., 461.

In *State v. R. Co.*, 36 N. J. L., 164, the court, drawing the distinction between estates and interest in a statute providing for condemnation of right-of-way, said:

"Under the more comprehensive term, 'persons interested,' are included not only persons in whom is vested the legal title which the company proposes to acquire, * * * but also other individuals having some independent right or interest therein, * * * such as an easement of a right-of-way, inchoate rights of dower or courtesy, or incumbrances, such as by judgments or mortgages, which are charges on the legal estate. The obect is * * * that their interest may be extinguished by payment."

The Supreme Court of California, construing a statute allowing a party "beneficially interested" a writ of review of an order of the board of supervisors, granting a right to use a highway for the purpose of constructing a railroad, held that an affidavit alleging that "affiant, in common with others living along the highway, would be damaged," was insufficient, and said:

"It does not appear by the petition in this case that the *petitioner has any other or greater right in the highway mentioned therein than any other citizen of the State.* * * * In an

application made by a private party, *his interest must be of a nature distinguishable from that of the mass of the community.*"

Linden v. Alameda County, 45 Cal., 7.
Ashe v. Colusa County, 71 Cal., 236.

If a person living on a highway has "*no other or greater interest therein than any other citizen of the State,*" *then a person living on or in the vicinity of an improved highway—a railroad—has no other or greater interest in the railroad* than any other citizen of the State, and the citizens of Wilkes County, whether they live along or away from the line of railway, "*have no other or further interest therein than any other citizen of the State.*"

ADDITIONAL AUTHORITIES CONSTRUING "INTEREST" AS MEANING A PECUNIARY, VALUABLE, OR BENEFICIAL INTEREST, NOT MERELY A PATRIOTIC OR SENTIMENTAL INTEREST WHICH A CITIZEN OF A STATE OR COUNTY FEELS IN A PUBLIC IMPROVEMENT.

As shareholders, by reason of a subscription already made, the citizens of the county would have an interest in any contract from which, as shareholders, they might derive profit, as by making an incomplete road more valuable by extension.

Todd v. Robinson, Q. B. D., 739.
Hunnings v. Williamson, 112 Q. B. D., 536.

"Beneficial interest" was construed to mean present, vested, or valuable interest by the Supreme Court of Massachusetts.

Dexter v. Cotting, 149 Mass., 92.

Interest in an estate or action, where requisite to give a person standing in court as a party to an action, is universally construed to be a beneficial, valuable, vested, or pecuniary interest.

Bachman v. Packard, Q. Fed. Cas., No. 709.
Northampton v. Smith, 11 Met. (Mass.), 395.
Goodall v. Tuttle, 10 Fed. Cas., No. 5533.

Whitney v. Brittain, 16 N. Y. App. Div., 457.
Hevin v. Valcano, etc., Co., 13 Ca., 62.
Bugher v. Gott, 3 N. Y. Supp., 518.
Whitney v. Barley Q. B. D., 154.
Burgess v. Clark, 14 Q. B. D., 735.
Gasquet v. Johnson, 1 La., 431.

The interest which disqualifies a Judge from sitting is held to be "a property interest" in the action and its results, not "the interest which he may have in common with other citizens in a public matter."

Sauls v. Freeman, 24 Fla., 209.
Chicago, etc., R. Co. v. Kellogg, *supra*.

The foregoing list of authorities might be enlarged by adding scores of cases in which the word interest is interpreted in the same way, but it is not deemed necessary to cite any but the following:

Taylor v. Norment, 88 Ill., 327.
Wilson v. Railroad, 37 Ala., 358, 360.
In re. Estate of White, 37 Cal., 100.
Shelton v. Derby, 27 Conn., 415, 421, 425.
Smith v. Phillips, 62 Ala., 578.

"Interest" is defined in dictionaries, where it relates to property such as railroads, generally as a legal concern of a person in a thing, or in the conduct of another person, whether it consist in the right of enjoyment of or benefit from property or right to claim an advantage, or be subjected to a liability on account of the conduct or management of property.

In other words, an interest is either a legal right in a thing, as property, or such a relation to it as to enable one to participate in the profits of its conduct or management, or share in the loss arising from its management.

One of the definitions given by the Standard Dictionary of "*interested*" is "*being a part owner; as one interested in railroad shares.*"

It is contended for the petitioners that the citizens of a county, collectively, could only be interested, in the ordinary and obvious meaning of the word as applied to railroads, where the corporation, which embodied all rights of the citizens as a body, has some interest in the shares of its stock. This definition is in harmony with the contention of the petitioners that the last clause of section 1996 is surplusage, unless it restricts the power to subscribe to roads in which the county may already own shares of stock.

The lexicons and law books uniformly define an interest in any kind of property in the same way. If the word has no technical meaning, then it must be interpreted according to its ordinary meaning.

Adams v. Turrentine, 30 N. C., 147.
Blue v. McDuffie, 44 N. C., 13.
Randall v. Railroad, 107 N. C., 748, 750.

Whatever rule of construction may be followed, the interpretation must be the same, and, seeing this, on the first hearing, Judge Goff incorporated into the opinion the entire discussion of this point by the Supreme Court of North Carolina in *Commissioners v. Snuggs,* expressing briefly the approval of the Court. (See 96 Fed. Rep., 284.)

On the other hand, in the opinion delivered on February 4, 1902, in *Commissioners of Stanly v. Coler & Company,* the Court assumes that the Legislature did not mean "interest" in the sense of "pecuniary interest," because the qualifying word was inserted in the Constitution in reference to the State, but was omitted from the statute. The Court said the words "in which a citizen of a county may have an interest" in a railroad would seem to be the appropriate words to express the general interest which the whole body of the people of a county have in a railroad which they believe will benefit them, as distinguished from direct pecuniary interest of the county as a corporation. This construction of the word by the Court of Appeals is in direct conflict with the authorities cited, and is not supported by a single reference to law book or lexicon. The construction of the

State Court is set aside without a discussion, because that court, following the overwhelming weight of authority, held that the word "pecuniary" could only intensify and emphasize the word "interest," and that the word "interest," in such a connection, was intended to denote pecuniary interest, and was, except for the purpose of emphasis, surplusage. *But half of section 1996 is declared surplusage by the Court of Appeals in order to lean against the construction of the State Court.*

This opinion is remarkable in that it disposes of the ruling of a State Court with so little ceremony, and in that, though overruling the construction given by the State Court to its own statute, it substituted its own interpretation without citing an authority to sustain its views. Indeed, no reason whatever is given for rejecting the definition of the Court, though it would seem that the concensus of opinion in all Courts has been that, when applied to property, an interest means a pecuniary interest; and no regret is expressed for disregardig the State's construction.

Was it not reasonable and proper that the Supreme Court of North Carolina should adopt the definition given both by law books and dictionaries, and should have added that such an interpretation of a statute enacted by the reconstruction Legislature was in harmony with the policy of the reconstruction constitution? Of this, that Court, having knowledge of the peculiar conditions in the State and its policy, as indicated by a comparison of its various laws and their interpretations, was certainly more competent to judge. (See discussion of policy, *post.*)

Judge Boyd, in the concurring opinion in *Commissioners v. Coler, supra,* declares it to be both the right and duty of the Court of Appeals to "construe the language of sections 1996-2000 according to their natural and proper meaning;" but he fails to refer to law books or lexicons from which that Court gathered the "natural and proper meaning."

We challenge the respondents to produce authority of Courts or scholars for such a definition of interest as applied to a railroad.

The statute requires the subscription must be "necessary to aid in the completion of any railroad," etc.

The petitioners respectfully insist that the word "COMPANION" has also a most material bearing upon the question of legislative authority—that is, in indicating the *class of counties* to which the act refers.

Judge Goff, in delivering the unanimous opinion of the Circuit Court of Appeals, 96 Fed. R., *supra:*

"But did the sections above mentioned give additional and complete authority to order the elections, issue the bonds and levy the taxes to pay them, principal and interest? Section 1996 is in these words: 'The Boards of Commissioners of several counties shall have power to subscribe stock to any railroad company or companies when necessary to aid in the completion of any railroad in which the citizens of the county may have an interest.' It will be necessary, in order that that section may be construed to give authority to the Commissioners to issue the bonds, that the language should include a railroad not begun to be built before the Constitution was adopted; that the word 'completion' should be construed 'building' or 'construction,' extending even to the building of a new road; for in this case before us, it appears that the road had not begun to be built. We can not see why the word 'completion' should be thought to have been used by the legislators in any other sense than the one most usual and natural. Ordinarily, the words 'to complete' are understood to mean 'to finish,' 'to fulfill,' and the word 'completion' to mean the 'finishing' or 'accomplishing in full' of something which has already been commenced; as, for instance, it is most frequent to hear the word 'completion' used in connection with the finishing years and months of the education of the young. The object of the statute must have been to provide, by general act, means by which the counties, without special legislation for each county by separate bills, might be enabled to complete unfinished railroads in which the counties had a pecuniary interest. At the time of enactment of the statute of 1868-'69, and always since that time, any county of the State, duly observing the limitations of section 7 of Article VII of the Constitution, and under an act passed according to the require-

ments of section 14 Article II, of the Constitution, could, and can, subscribe to the capital stock of a railroad company, whether unfinished or to be begun. *The act of 1868-'69, however, considering the condition of the affairs then existing—that is, that there were counties which had a pecuniary interest in the railroads that had been begun, but unfinished—enabled such counties to make subscriptions of bonds to complete such unfinished roads at the earliest moment and with the least cost, by general law, passed according to section 14, Article II, of the Constitution."*

THE LEGISLATURE OF NORTH CAROLINA INTENDED TO EMPOWER ONLY THOSE COUNTIES WHICH HAD ALREADY INVESTED IN THE STOCK OF A RAILROAD COMPANY, BUT HAD NOT THEREBY EFFECTED THE COMPLETION OF THE LINE, TO MAKE AN ADDITIONAL SUBSCRIPTION TO THE STOCK.

Because, FIRST, any other construction would have allowed a subscription to be made by any county in the State, for the citizens of Wilkes County, by reason of vicinage, *had no other or greater interest " in the railroad than other citizen of the State."*

SECOND. According to all rules of construction, it must be assumed that the Legislature intended to describe a class of counties, and limit the power to them, since it is an established rule that the Courts must, if possible, give effect to all of the words of a statute, as the Supreme Court of North Carolina did; whereas, the Court of appeals found it necessary, in order to sustain the bonds, to construe the words of limitation as mere surplusage.

THIRD. It is an historical fact, alluded to in *Galloway v. Chatham Railroad Co.*, 63 N. C., 147, and *University v. Holden*, 63 N. C., that counties, as well as the State, had been lending their credit and subscribing to the stock of railroad companies, and that section 14, Article II, and section 7, Article VII, of the Constitution of 1868, had been inserted in that instrument to restrain counties from reckless expenditures of

this kind, just as sections 1, 4, article VI, had been framed as a check upon extravagant legislation by the State. (See 63 N. C., page 147.)

FOURTH. Sections 1996 to 2000 of The Code were first enacted by the reconstruction Legislature of 1868, which attempted to shape the statutory law so as to bring it into harmony with the Constitution, and it is in harmony with the general policy of the State to construe the restrictive clause of section 1996 as conferring the authority to subscribe on counties already interested pecuniarily in the railroad to which they propose to subscribe, just as the Legislature, in order to protect investments already made by the State, was empowered to subscribe to railroads in which the State had already become interested.

FIFTH. Section 3766 of The Code (enacted in 1868) provides that where statutes are re-enacted "the portions not altered are to be considered as having been the law since their enactment; and at the time of their enactment."

Neither The Code, sections 1996 to 2000, nor the charter are sufficiently specific to comply with Article V, sections 6 and 7, of the Constitution.

In *Commissioners of Buncombe County v. Payne* (123 N. C., 432, 488, decided December 8, 1898, a month after the opinion was filed in *Commissioners v. Call*, on November 9, 1898, and during the same term), the Court said, at page 448:

"*A general act, authorizing any and all counties to issue bonds, would be invalid, especially when (as in the case here) it is necessary* to exceed the constitutional limitation *to pay interest or principal. Tate v. Commissioners*, 122 N. C., 812 (at page 815); *Herring v. Dixon, id.*, 420 (at page 124)."

In *Commissioners of Wilkes v. Call*, 123 N. C., 308 (at page 324), Justice Douglass said, in reference to the necessity for specific statutes:

"If the word 'uncompleted' can refer to any road not yet begun, and the word 'interest' apply to a mere friendly feeling or supposed advantage to be derived from the general building up of a country, then the several counties may go on *forever*

subscribing unlimited amounts to any railroad in esse or in futuro that may be located within the range of their knowledge. Such a construction would simply nullify the Constitution by making its explicit restrictions vain and worthless. It can not be adopted by us, but, if we were forced to adopt it, we would be equally forced to declare those sections null and void. If they mean that, they have no place upon the statute books. While the Legislature may, in individual cases, grant to specific counties the necessary authority, in accordance with the provisions of the Constitution and subject to its restrictions, *it can not, by a sweeping act of unlimited application, utterly destroy its operation.* If the Legislature or the railroad company or the county had placed any such construction on those sections, additional legislation would have been deemed useless, and the recitals in the bonds would have been different."

In short, the declaration of the State Court is that the sections referred to, if susceptible of the construction placed upon them by the Circuit Court of Appeals, were in violation of the Constitution (referring, of course, to Article V, sections 6 and 7).

Article V, sections 6 and 7, are as follows:

"SEC. 6. *Taxes levied by County Commissioners.*

"The taxes levied by the Commissioners of the several counties for county purposes shall be levied in like manner with the State taxes, and shall never exceed the double of the State tax, *except for a special purpose, and with the special approval of the General Assembly.*

"SEC. 7. *Acts levying taxes shall state object, etc.*

"Every act of the General Assembly levying a tax shall state the special object to which it is to be applied, and it shall be applied to no other purpose."

There is no finding as a fact in *Commissioners v. Payne, supra,* that the levy of a tax sufficient to meet the interest "or principal" at maturity would exceed the constitutional limit (of sixty-six and two-thirds cents on the hundred dollars in value of property taxed). But the Court takes judicial cognizance of public law and reports of the Auditor as to the assessed value of

property and the amount of taxes imposed. Upon this information, which is within the reach of every citizen who can read as well as of the Court, the Court declared that it would be necessary to exceed the limit in order to pay interest and principal at maturity of the Buncombe debt.

For like reason Justice Douglass said, in *Commissioners v. Call* (123 N. C., page 324), in condemning the construction of The Code now adopted by the Circuit Court of Appeals, which would allow all counties to subscribe "unlimited amounts to any railroad *in esse* or *in futuro*, that may be located within the range of *their knowledge*," said:

"Such a construction would simply nullify the Constitution *by making its explicit restrictions vain and worthless. It can not be adopted by us, but if we were forced to adopt it, we would be equally forced to declare those sections null and void. If they mean that, they have no place upon the statute books.*"

Judge Douglass was warranted in declaring, of his judicial knowledge, that it would be necessary for Wilkes County to exceed the constitutional limit. Were we to concede the soundness of the position taken by the Court of Appeals that it is not essential to levy a special tax " in the same bill," except when the tax will exceed the limit, then our position would be untenable under even that rule.

The construction placed by Justice Clark and Douglass, speaking for the Court in the Buncombe and Wilkes cases, upon the State Constitution, finds support in older adjudications of the State Court.

THE SETTLED LINE OF DECISIONS OF THE SUPREME COURT OF NORTH CAROLINA PRIOR TO OCTOBER 1, 1889, WHEN THE WILKES COUNTY BONDS WERE ISSUED, IS IN ACCORD WITH THE RULING IN COMMISSIONERS v. PAYNE, SUPRA, THAT A GENERAL ACT PURPORTING TO AUTHORIZE "ANY AND ALL COUNTIES TO ISSUE BONDS WOULD BE INVALID BECAUSE OF FAILURE TO PROVIDE FOR LEVYING A SPECIAL TAX."

In *Galloway v. Chatham Railroad Company*, 63 N. C. R., 151, 152 (decided at January Term, 1869), the Court held that there were two conditions upon which the State should be allowed to contract a new debt before the bonds of the State should be at par (under a fair interpretation of Article IV, section 5, of the Constitution):

1st. Unless it (the Legislature) shall, in the same bill, levy a special tax to pay the interest annually, and

2d. "Unless the subject be submitted to a direct vote of the people of the State, and be approved by a majority of those who shall vote thereon."

The Court held in that case that the meaning of the sections is that "the General Assembly shall have no power to create new debt or pecuniary obligation (except in two specified cases), unless *a special tax be levied in the same bill to pay the interest.*"

Thirty years later Justice Clark, delivering the opinion of the Court in *Commissioners v. Payne*, 123 N. C., at page 488, construed sections 6 and 7 of Article V of the Constitution of North Carolina, which is as follows:

"SECTION 7. Every act of the General Assembly levying a tax shall state the special object to which it is to be applied, and it shall be applied to no other."

In connection with the prohibition in section 6 of Article V, that the tax levied by the counties "shall never exceed the double of the State tax, except for a special purpose and with the special approval of the General Assembly."

Judge Clark declared, for the Court, that neither the general provision of The Code, section 1999, nor the general provision of the charter of the Northwestern North Carolina Railroad Company, construed in connection with that of the Atlantic and North Carolina Railroad Company, was sufficienty specified to confer authority on Wilkes County to subscribe or issue the

bonds or levy the tax to meet the principal and interest of the bonds.

The provisions of The Code and of the charter referred to are as follows:

"SEC. 1996. The Boards of Commissioners of the several counties shall have power to subscribe stock to any railroad company or companies, when *necessary to aid in the completion of any railroad in which the citizens of the county may have an interest.*"

"SEC. 1999. In case the county shall subscribe the amount proposed in bonds, the Board of Commissioners shall have power to fix the rate of interest, not to exceed the rate of eight per cent, when the interest on said bonds shall be payable, and at what place, and shall also fix the time and place of paying the interest, and shall also determine the mode and manner of the same; and also to raise by taxation, from year to year, the amount necessary to meet the interest on said bonds."

"SEC. 2000. The taxes authorized by the three preceding sections to be raised for the payment of interest or principal, shall be collected by the sheriff in like manner as to other State taxes, and be paid into the hands of the County Treasurer, to be used by the Chairman of the Board of County Commissioners as directed by this chapter."

SECTION 12 OF THE CHARTER (PAGE 54 OF THE PRINTED RECORD), SECTIONS 33 AND 36 OF THE CHARTER OF THE ATLANTIC AND NORTH CAROLINA RAILROAD (PAGES 54 AND 55 OF THE PRINTED RECORD).

"SEC. 12. *Be it further ordained,* That the stockholders of said company may pay the stock subscribed by them either in money, labor, material for constructing said road, as the Board of Directors may determine, and that *all counties or towns subscribing stock to said company shall do so* in the same manner and under the same rules and regulations and restrictions as *are set forth and prescribed in the act incorporating the North Carolina and Atlantic Railroad Company, for the government*

of such towns and counties as are now allowed to subscribe to the capital stock of said company."

Chapter 136 of the Laws of North Carolina, session 1852.

"SEC. 33. *Be it further enacted,* That it shall be lawful for any incorporated town or county, near or through which said railroad may pass, to subscribe for such an amount of stock in said company as they shall be authorized to do by the inhabitants of said town or the citizens of said county, in *manner and form as hereinafter provided."*

"SEC. 36. *Be it further enacted,* That for the purpose of paying the quotas on said stock as may be called for, or in the installments of such subscriptions as may fall due, the town authorities and the justices of the county shall have power to appoint an agent or agents to negotiate a loan or loans for and in the name of such town or county; and it shall be the duty of the authorities of such town and the justices of such county to levy such taxes annually on the persons, lands and other personal property within such town and county as may be sufficient to pay the amount of such loan or loans and the interest thereon, and as said town authorities and justices of such county shall deem necessary and proper, and to make such order or orders as shall be deemed necessary for the due collection and payment of the same; and the stock subscribed on behalf of such town and county shall stand pledged for the payment of the loan thus authorized to be contracted."

The Constitution of North Carolina provides as follows:

"ARTICLE II, SEC. 21. The style of the acts shall be: *The General Assembly of North Carolina do enact."*

The Supreme Court of North Carolina, in *State v. Patterson,* 98 N. C., 660, 661, 662, 665, 666 (decided September, 1887, two years before the bonds were issued), held that a statute in all other respects in the form prescribed, but without the prescribed enacting clause, was void.

The Court declared all of the requirements of the Constitution to be mandatory, using, at pages 661, 662, the following language:

"It (the Constitution) is not to be disregarded, ignored or suspended, or broken, in whole or in part, nor can any officer, or a co-ordinate branch of the government, supply, superadd or assume power and authority not conferred by it. In this latter respect it expressly provides that 'all powers not herein delegated remain with the people.'

"More particularly, for the present purpose, when the constitution prescribes and directs in terms, or by necessary implication, that *a particular power shall be exercised in a specified way, or a particular thing shall be done by a particular co-ordinate branch of government—as the Legislature—or by a particular officer or class of officers, and prescribes the way and manner of doing it, such direction cannot be disregarded; a due observance of it is essential, because the Constitution so provides, and its provisions are not in vain or of trifling moment. It is not of the nature of constitutions of government to provide non-essentials—useless, unimportant details—such as may be disregarded and dispensed with.* As we have said, they are organic—made upon solemn consideration by the sovereign authority, and contain general, essential provisions—details are avoided, unless deemed important—essential.

"The answer to these and like questions must be, that requirements of the Constitution shall prevail and be observed; and when it prescribes that a particular act or thing shall be done in a way and manner specified, such direction must be treated as a command, and an observance of it essential to the effectiveness of the act or thing to be done. Such act can not be complete—such a thing is not effectual—until done in a way and manner so prescribed" (Wilkes County Commissioners v. Coler, 180 U. S., 506, 521).

Justice Clarke in Commissioners v. Payne, 123 N. C., at page 488, construed the command contained in the latter half of sec-

tion 6, and section 7, of the Constitution according to the rule laid down in State v. Patterson, supra, two years before the bonds were issued in 1889, to-wit, in September Term, 1887. Justice Douglas followed the same rule when he declared that the provisions of the charter and the sections of The Code had no place on the statute book, if susceptible of the interpretation that they gave the same general authority to other counties as was given to Forsyth county.

By reference to Bank *v.* Commissioners, 116 N. C., 339 and Bank *v.* Commissioners, 119 N. C., 214, it becomes apparent that the Court of Appeals drew an inference from the two opinions that was unwarranted. The controversy was as to the validity of a subscription by the town of Oxford to a railroad company, which was chartered to build a railroad connecting the town of Oxford with the Coast Line, just as the ordinance of 1868 authorized the connection of Winston-Salem, in Forsyth county, intersecting by a line with the North Carolina road somewhere from Greensboro to Lexington. The town of Oxford was designated as the initial point of the proposed road, and the sufficiency of the authority was questioned in the first case (see 116 N. C., 363), because the Legislature had failed to provide in the charter itself the machinery for holding the election, and the Court decided that the general acts providing for holding such elections furnished the necessary authority as to the manner of holding them and counting votes; but it was not till the question was raised on the second appeal (119 N. C., 214) that the Supreme Court of North Carolina ever considered whether the authority to create the debt, *even with the approval of the voters of the town,* had been granted by the Legislature, and, then, apart from the question of estoppel, the discussion on the argument and in the opinion of the Court, was directed to the new evidence showing that the statute relied on as authority for issuing the bonds was not enacted in accordance with the requirements of Article II, section 14, of the Constitution.

It is a significant fact that the Act of 1868 (Code, secs. 1996 to 2000) was not referred to by Justice Bynum in the opinion in Belo v. Commissioners, nor by counsel in the argument of that

case, though the action was brought by Mr. McCorkle, former reporter and one of the ablest lawyers in the State, and though the case was decided eight years after the passage of the act of 1868-'9.

THE CASES OF HERRING v. DIXON, 122 N. C,. 420, AND TATE v. COMMISSIONERS, 122 N. C., 812, SUSTAINED JUDGE CLARK'S POSITION AS TO THE INSUFFICIENCY OF STATUTES PURPORTING TO CONFER GENERAL AUTHORITY ON COUNTIES TO CREATE DEBTS EXCEPT FOR NECESSARY EXPENSES.

It will be observed that the act construed in Herring *v.* Dixon, *supra,* conferred certain powers on three counties specifically named in the act, to-wit, Green, Wilson, and Wayne, and that the statute construed in *Tate v. Commissioners, supra,* named *Haywood county as the donee of certain power.*

WAS ANY POWER GRANTED TO WILKES COUNTY BY THE CHARTER, CONSTRUED WITH ALL AMENDMENTS FROM 1868 TO 1881, WHICH ARE HEREINBEFORE PRINTED AS A PART OF THIS BRIEF? DOES THE CHARTER AS AMENDED PLACE WILKES COUNTY IN THE SAME CATEGORY WITH FORSYTH COUNTY? THIS IS A QUESTION LEFT OPEN BY THE COURT IN WILKES COUNTY v. COLER, 180 U. S., 506.

In discussing the charter as a grant of power to issue these bonds, conceding the authority of Forsyth County to create such a debt, the Court began the discussion by laying down the proposition that Wilkes County was in a different category, in the following language (see *Commissioners v. Call,* 123 N. C., at page 313):

"First, we do not see that any authority whatever is given, or attempted to be given by these sections to Wilkes County to subscribe to the capital stock of this company."

"The cases are clearly distinguishable. Another important point of difference is that the Forsyth County bonds were voted and subscribed within a few months after the passage of the ordinance, before whatever power it may have given had expired by its own limitation. It is evident that the Legislature, as well as the railroad company itself, thought that the authority given in the ordinance was not sufficient, as in both cases additional legislation was sought and obtained. But with this especial difference: In the case at bar the amendatory act having been passed in violation of the mandatory provision of the Constitution, in legal contemplation, was never passed."

Construing its own laws, the Supreme Court of the State differentiated the case of Wilkes County and the power of Wilkes County from that Forsyth County. Under the established rule, the Federal Court must lean towards that construction and assume that it is correct, until it satisfactorily appears that its conclusions are not well founded.

Claiborne County v. Brooks, 111 U. S., 400, 410.
Burgess v. Seligmon, 107 U. S., 20, 23.

THE SAME CONSTRUCTION GIVEN TO THE CHARTER BOTH BY THE LEGISLATURE AND THE RAILROAD COMPANY ITSELF.

In doubtful cases of construction, the Supreme Court has been influenced, as have other appellate courts, by the fact that the Legislature of a State placed a given construction upon a statute of said State.

Garrett v. Mobely, 103 U. S., 580, 588.
Letter of Supreme Court to Governor of North Carolina, 114 N. C., at page 925.

"Where business relations have been heretofore adjusted or rights to offices have been recognized as settled by the legislative sanction so given to a particular construction of doubtful language, courts are even more averse to disturb or overrule a principle which has been accepted and acted upon by the public, because it had the approval of the lawmakers whose power to enact or modify statutes is limited only by the Constitution, and

whose interpretation of the organic law is entitled to such profound respect that it will be disturbed by the Courts only on the weightiest considerations." * * *

"We are confronted at the threshold of the investigation by the fact that the legal adviser of your Excellency has, at your request, submitted a well considered and strong argument upon the one side, while some others of the ablest and most learned members of the legal profession have favored us with powerful presentations of the opposing view. When the scales are so nearly evenly balanced, we deem it our duty to settle the preponderance by casting the legislative view, which is of peculiar weight in this case, into the scales where it belongs. Another consideration which influences us to act upon this view is the fact that, after applying all the rules devised to aid us in ascertaining the meaning of a constitutional provision, it must be admitted that the science of law is less exact in its application to construction to be placed upon words than to any other subject, since such is the imperfection of human language that lawmakers often fail to express their meaning in unequivocal terms, and the interpretation of doubtful expressions of their purpose almost always leads to conflict even amongst the most learned jurists."

Letter of Supreme Court, *supra*.

THE CONSTRUCTION OF COUNSEL FOR THE RAILROAD CAMPANY AND FOR THE COUNTY.

No attempt was made by a county to subscribe to the capital stock of the Northwestern North Carolina Railroad Company from August, 1868, until after the enactment of the amendments to the charter in 1879 and 1881 (see printed record, Exhibit "E," page 14, and Exhibit "G," page 17), in both of which *void acts* provisions were inserted purporting to authorize counties west of Forsyth to make subscriptions payable in bonds; *but between 1868 and 20th February, 1879, there was nothing that designated counties authorized to subscribe, except what appeared in the charter, sections 1 and 13 (printed record, Exhibit "A," pages 10 and 13)*, first, that the first division of the road should extend from some point on the North Carolina

Railroad to Winston-Salem, in Forsyth County, and should run by that place to the northwestern boundary of the State; and, second, that the company might construct branches, one of which should run from that place, by Mount Airy, in Surry County, to the line of the State of Virginia, and a provision of section 12 of the charter (printed record, page 13), *"that all counties or towns subscribing stock to said company shall do so in the same manner and under the same rules, regulations and restrictions as are set forth and prescribed in the act incorporating the North Carolina and Atlantic Railroad Company for the government of such towns and counties as are now allowed to subscribe to the capital stock of said company."*

By reference to the printed record (pages 16, 38, 39, 44 and 46), it will appear that R. B. Glenn, counsel for the railroad company, and the advisers of the company, agreed upon the former bonds, reciting the Act of 1879 as authority. While this recital may not operate as an estoppel so as to prevent the holder of the bonds from relying on other legislation to authorize its issuance, the fact remains, that the opinion of the public, including the company to which the bonds were delivered, acting under the advice of counsel, should have its weight in determining whether the Supreme Court shall overrule the opinion of the Supreme Court of a State, following the legislative construction, as well as the construction of the public and parties interested, or whether the Supreme Court will overrule the decision of a Federal Appellate Court, not presumed by law to be so competent to construe the laws of the State. The appellants insist that this contemporaneous construction ought to incline the Court to lean to an agreement with the State Court.

Amoskeag Nat. Bank v. Ottawa, 100 U. S., 667.

THE REFERENCE TO THE CHARTER OF THE ATLANTIC AND NORTH CAROLINA RAILROAD COMPANY OPERATED TO CONFER POWER TO SUBSCRIBE ONLY ON THE COUNTIES SPECIFICALLY MENTIONED IN THE CHARTER, FORSYTH AND SURRY. WILKES WAS NOT MENTIONED AND WAS NOT THEREFORE MADE THE DONEE OF SUCH POWER.

The act incorporating the Atlantic and North Carolina Railroad Company (referred to in section 12 of the charter as the North Carolina and Atlantic Railroad Company) is chapter 136 of the Laws of North Carolina, enacted at the session of 1852, and the material portions of the charter, relating to subscripn by towns and counties, are printed in the record, pages 54 and 55. The provision of the charter "that all counties or towns subscribing stock to said company shall do so in the same manner and under the same rules, regulations and restrictions as are set forth and prescribed in the act incorporating the North Carolina and Atlantic Railroad Company, for the government of such towns and counties as are now allowed to subscribe to the capital stock of said company," was held, in *Belo v. The Commissioners*, 76 N. C., 489, to be written into the charter by the reference, *as appellees contend*, so far as confer upon Forsyth County the authority to subscribe, without additional legislation.

Suppose that this contention is well founded, then the decision amounts only to a holding that it was "lawful" for Forsyth County, "through which" said railroad was *required to pass by sections 1 and 13 of the charter*, was clothed by this reference with power to subscribe. It is familiar learning that such powers can not be exercised by counties, except when given in direct terms or by necessary implication. An exhaustive list of authorities sustaining this elementary proposition will be found in Dillon on Corporations.

Commissioners v. Call, 123 N. C., at page 316.

UNDER A SETTLED LINE OF DECISIONS OF THE SUPREME COURT OF NORTH CAROLINA THE WORD "NEAR" IS HELD TO BE TOO INDEFINITE AS A DESCRIPTIVE TERM TO FIX AND DETERMINE LOCATION OF A BOUNDARY LINE. IT FOLLOWS INEVITABLY THAT THE WORD CAN NOT FIX THE LOCATION OF A COUNTY OR CLASS OF COUNTIES REFERRED TO IN A STATUTE.

The Supreme Court of North Carolina had, by a line of decisions running back for about a century before the bonds were

issued, held that the word "near" was too indefinite to fix and determine locations. Applying the principle that the Court had adjudged that a call for a stake, an indefinite point, in a known line, by a certain course, should be extended beyond the distance given so as to intersect with such line, while if the same call had been for a stake "*near*" such line, it should not be run or extended beyond the distance called for, because the word "*near*" designated no particular point.

Cansler v. Fife, 50 N. C. (5th Jones), 424, 427.
Mizell v. Simmons, 79 N. C., 182.

In *Cansler v. Fife* (50 N. C., at pages 427, 428), the Court said:

"In respect to the question as to Rickman's line, we also concur with his Honor. There was no evidence by which the jury could locate that line; supposing it to have been located, *the call for a Spanish oak, in or near* Rickman's line, *would not control course and distance,* because the Spanish oak could not be found, *and the word 'near' is not sufficiently certain. How near? One pole or fifty? Either would satisfy the term 'near.'*

"Harvey v. Goodman, 1 Dev. and Bat. Rep., 76."

In attempting to show that the line, *which is called a branch in the void Act of 1879,* is built as the second division, leaving out of view said void act, the Court (at page 116 of the record) said:

"The piece of railroad for which the bonds in suit were issued does run from Salem and Winston, in the general direction of the northwestern boundary line of the State, and, indeed, *it seems evident that such a railroad, to some point in the northwestern boundary line of the State, must pass near or through Wilkes County.*"

Construing the ordinance "*alone,*" the Court, in order to sustain the validity of the bonds, was driven to the necessity of holding as a matter of judicial knowledge that a line through an adjacent county to Wilkes would be within the meaning of

the ordinance (the charter) near to Wilkes County. "How near; one mile or fifty?" (50 N. C., page 428). Yet the law of North Carolina, before 1868, in October, 1889, was that a jury must be instructed that the word "near" was too indefinite to determine location. Yet the Court, in *Wilkes County Commissioners v. Coler,* 180, 506, 531, said:

"It is settled doctrine of this Court 'that the question arising in a suit in a Federal Court of the power of municipal corporations to make municipal securities,' is *to be determined* by the law, as judicially declared by the highest Court of the State, when the securities were issued, and that the rights and obligations of the parties accruing under such a state of the law, would not be affected by a different course of judicial decision subsequently rendered any more than by subsequent legislation."

"When the securities were issued" (in October, 1889) "the law of the State, as judicially declared by the highest Court of the State" for a century, was that the word "near" was too indefinite, as a descriptive term, to fix and determine location, and consequently that the Court could not say judicially, nor allow a jury to determine, that near a county means in an adjacent county or in a county between which and Wilkes there was only one county intervening.

THE PROVISIONS OF ALL THE AMENDMENTS TO THE CHARTER, WHICH PURPORT TO FIX THE LOCATION OF ANY LINE WEST, NORTHWEST OR SOUTHWEST OF WINSTON-SALEM, OR TO DETERMINE THE LOCATION OF ANY LINE EXCEPT THAT EXTENDING FROM THE NORTH CAROLINA RAILROAD TO WINSTON-SALEM, APPEAR IN THE STATUTES REFERRED TO IN EXHIBIT "H," PAGE 17, OF THE PRINTED RECORD, AND WHICH ARE SET FORTH IN FULL IN THIS BRIEF.

The first of these is the Act of August 11, 1868, which, as is admitted in the record, did not pass in the mode prescribed, and is void. It is manifest from reading the opinion in *Belo v.*

Commissioners, 76 N. C., at page 498, that, while the Court apparently held that the charter *conferred the authority on Forsyth County, which was mentioned specifically in the charter, not on any other county not so mentioned*, the Court held certain evidence offered, which is not mentioned in the opinion, incompetent and irrelevant, because "the ratifying Act of August, 1868, was a curative act and validated both the county subscriptions and the issue of the bonds, if any defect existed therein." Suppose evidence had been offered, as in this case, that the curative act was void, then the immaterial and irrelevant evidence offered to show the "defect," that might have been shown if that act had not been treated as valid, would have been admitted.

The Court said, in the Belo case, at page 498: "Declaring, as we do, that the ratifying act of August, 1868, was a curative act and validated both the county subscriptions and the issue of the bonds, if any defect existed therein (and it has been one purpose of this opinion to show that the bonds were valid in the hands of *bona fide* holders without aid of this healing act), *the proposed evidence of the defendants became immaterial and irrelevant.* As a matter of law the bonds were valid and the Court did not err in so declaring.

"The only issue submitted to the jury was: 'Is the plaintiff the *bona fide* owner and for value of the bonds and coupons mentioned in the pleadings, and was he such at the commencement of the action.' "

DID THE AMENDMENTS BETWEEN THE ENACTMENT OF THE CHARTER IN 1868 AND THE PASSAGE OF THE VOID ACT IN FEBRUARY, 1879, FOLLOWED BY THE VOID ACT OF 1881, FIX THE LOCATION OF ANY LINE OR BRANCH OF THE NORTHWESTERN RAILROAD AS RUNNING THROUGH WILKES COUNTY, THE WORD "NEAR" HAVING BEEN DECLARED BY THE SUPREME COURT OF NORTH CAROLINA, BEFORE THE BONDS WERE ISSUED, TOO INDEFINITE TO FIX THE LOCATION OF A LINE?

By reviewing these enactments, hereinbefore numbered 3, 4, 5, 6, 7, 8, it will appear that the only references to location in these last named amendments, the validity of which is not questioned, are as follows: First, the Act of the 21st of August, A. D. 1868, declares that the statute was enacted "for the purpose of *aiding in the construction of the Northwestern North Carolina Railroad from Salem, in Forsyth County, to Mount Airy, in Surry County.*" (See *ante*, 3, sec. 1.)

Second. That the Act of February 3, 1869, was enacted with two objects in view—

1st. "For the purpose of aiding in the construction of the Mount Airy division of the Northwestern North Carolina Railroad, *from Salem, in Forsyth County, to Mount Airy, in Surry County, and the first division of said road from Greensboro to Salem and Winston.*"

2d. "*For the purpose of aiding in the construction of the Yadkin Valley Division of said railroad, running from Salem and Winston, by way of Lewisville, thence by way of Yadkinville, in the county of Yadkin, or within one and one-half miles thereof, thence up the valley of the Yadkin to the foot of the Blue Ridge, in the county of Caldwell.*"

See *ante* No. 4, sections 1 and 2.

Third. That in the Act of the 31st of March, 1871, the line from the initial point on the North Carolina Railroad is mentioned as a line to be completed "*from Greensboro to Salem, in Forsyth County.*"

See *ante* 6, section 1.

THE VALIDITY OF THESE ACTS IS NOT QUESTIONED, WHILE THE ACT OF 1879 AND THE ACT OF 1881 HAVE BEEN DECLARED VOID, AND NO LAWS IN COMMISSIONERS v. CALL, 123 N. C., 308, AND IN WILKES COUNTY v. COLER, 180 U. S., 506. THE VOID ACT OF 1879 CAN NOT BE HELD VALID TO BRING WILKES COUNTY IN THE SAME CATEGORY

WITH FORSYTH INDIRECTLY BY MARKING OUT A LINE THROUGH WILKES COUNTY AND CHANGING THE LINE DESIGNATED IN PRIOR VALID AMENDMENTS.

Conceding that by writing the sections of the Atlantic charter into the charter of 1868, power was conferred upon the counties, through which the lines described in the charter necessarily passed, to subscribe to the capital stock of the company, it would be monstrous to supplement that proposition, by holding that the Act of 1879, by marking out a line through Wilkes County, though void in so far as it purported to confer power directly on Wilkes County, because not passed in the manner prescribed in the Constitution for the protection of the taxpayers, nevertheless effected the purpose of subjecting those taxpayers to liability, by purporting to declare in another section of the act, that a second division of the road should pass through Wilkes County. It seems to appellants that the mere statement of such a proposition carries its refutation with it. *To declare the amendment of 1879 so far valid as to vest Wilkes County with authority, which it would not otherwise have had, to create a debt, by marking out the route of the second division in section 1 of the act, though section 4 (printed record, pages 14 and 15), purporting to grant* directly the same power which has been held void, is to annul the Constitution and evade the decisions of the highest Courts—State and Federal.

The Circuit Court of Appeals was in error when it rested its opinion upon the ground that the power to subscribe was conferred on Wilkes County by the void Act.

Referring to the Act of February, 1879 (printed record, pages 14 and 16), the Circuit Court of Appeals said, in the leading opinion (printed record, page 116):

"The Act of February 20, 1879, which is recited in the bonds as authority for issuing them, definitely located this road running into Wilkes County. It does it by enacting that the convention ordinance shall be amended by adding certain words, which make it read, when so amended, as follows (see section as amended, page 115)."

"Section 2 of the Act of February 20, 1879, provides for convict labor being furnished for the purpose of constructing this second division; and section 4 provides *for bond subscriptions by any county in the State.* The act was invalid so far as it attempted to give power to the counties to create a debt, because it was not passed as laws for that purpose are required by the Constitution of North Carolina to be passed, but that invalidity does not affect the sections of the law which deal with other matters.

Rodman v. Washington, 122 N. C., 39 to 42.
Russell v. Ayers, 120 N. C., 180, 189.
Gambell v. McCrady, 75 N. C., 509.
Bank v. Commissioners, 119 N. C., 214.

"So far as now appears, the amendment locating the road into Wilkes County *was validly passed and became a valid law of North Carolina.*"

IF THE LEGISLATURE ALONE HAD THE POWER TO LOCATE THE LINE OR LINES TO BE CONSTRUCTED WEST OF WINSTON-SALEM, AND SUCH LOCATION BY VIRTUE OF A SIMPLE ENACTMENT, WAS TO BE CONSTRUED AS AUTHORITY TO A COUNTY TO CREATE A DEBT, THEN SUCH A STATUTE WAS IN VIOLATION OF ARTICLE II, SECTION 14, OF THE CONSTITUTION, AND VOID, IF NOT ENACTED AS THEREIN REQUIRED. THE LEGISLATURE CAN NOT DO INDIRECTLY WHAT IT IS PROHIBITED FROM DOING DIRECTLY. THE CIRCUIT COURT OF APPEALS FAILED TO ADVERT TO VARIOUS AMENDMENTS TO THE CHARTER OF 1868, WHICH ARE REFERRED TO IN THE RECORD. AMONG THE ACTS SO OVERLOOKED IS THE ACT RATIFIED FEBRUARY 3, 1869 (ACTS OF 1868-'69, CHAPTER 62), ENTITLED "AN ACT TO REPEAL AN ACT ENTITLED AN ACT TO AMEND AN ORDINANCE OF THE CONVENTION ENTITLED AN ORDINANCE TO INCORPORATE THE NORTHWESTERN NORTH CAROLINA RAILROAD COMPANY, AND TO

SUBSTITUTE THE FOLLOWING PROVISIONS FOR SAID ACT."

(See 4, *ante*.)

The second section of the last-named act provided for State aid to the first division of the road from Winston-Salem, for the Mount Airy division, and "for the purpose of aiding in the construction of the Yadkin Valley division of said railroad, running from Salem-Winston by way of Louisville, thence by way of Yadkinville, in the county of Yadkin, or within one and a half miles thereof." By this act it was provided that the State should loan the company twenty thousand dollars a mile to construct the road by way of Yadkinville. This act has never been repealed, in so far as it provides for a different route from Salem-Winston, westward.

THE ONLY LINES LOCATED BY THE LEGISLATURE BEYOND WINSTON-SALEM WERE, FIRST, THE MOUNT AIRY DIVISION, AND, SECOND, THE "YADKIN VALLEY DIVISION OF SAID ROAD RUNNING BY LEWISVILLE JUST NORTH OF THE YADKIN RIVER IN YADKIN COUNTY, THENCE CROSSING SAID RIVER SO AS TO PASS "BY WAY OF YADKINVILLE, IN THE COUNTY OF YADKIN, OR WITHIN ONE AND ONE-HALF MILES THEREOF, THENCE UP THE VALLEY OF THE YADKIN TO THE FOOT OF THE BLUE RIDGE, IN THE COUNTY OF CALDWELL."

It would appear by an examination of any official map, such as the map made by the Railroad Commission or the Agricultural Department of North Carolina (not by *ex parte* maps made for the appellees), that a line run from Yadkinville directly to Lewis' Fork of the Yadkin River, and thence to Coffey's Gap, which has been recently shown to be the only practicable location for a crossing of the Blue Ridge in Caldwell County, would leave Wilkesboro many miles to the north of such line and still would run up the valley of Lewis Fork, which is the valley of the Yadkin. It is a matter of universal

knowledge in North Carolina that the Carolina and Northwestern Railroad Company has been attempting to leave its completed line from Chester, in South Carolina, to Lenoir, in North Carolina, some miles south of Lenoir, in order to get a shorter and more direct route to Coffey's Gap, because that had been shown to be the best and cheapest route across the Blue Ridge, and that the Legislature, at the instance of the citizens of Lenoir, repealed, in March last, all authority theretofore given to that company to construct a connecting line from any point south of Lenoir to Coffey's Gap.

DID THE CHARTER, AS HELD IN THE OPINION OF JUDGE MORRIS (PRINTED RECORD, 114 TO 117), WITHOUT THE AID OF THE AMENDMENT OF 1879, EMPOWER WILKES COUNTY TO SUBSCRIBE TO THE STOCK OF THE COMPANY?

The Court said:

"It appears to us that it was the same railroad authorized by the Convention ordinance. That ordinance authorizes a railroad running by way of Salem and Winston to some point on the northwestern boundary line of the State, to be thereafter determined, and contemplated and provided for its being built by divisions, and enacted that the portion to Salem and Winston should constitute its first division. The piece of railroad for which the bonds in suit were issued does run from Salem and Winston in the general direction of the northwestern boundary line of the State, and, indeed, it seems evident that such a railroad to some point in the northwestern boundary line of the State must *pass near or through* Wilkes County."

So the argument of the Court that the charter locates the line rests entirely upon the ascertion that a line to the northwestern boundary of the State, which may intersect with that boundary anywhere from Alleghany County on the Virginia line to Mitchell County on the Tennessee line, "must pass," not through, but "near or through Wilkes County." We have seen from authorities cited above, that the Supreme Court of North Carolina has held for nearly a century that the word "near" is

too indefinite to fix the location of a line. The bonds were issued in contemplation of those decisions, and, surely, the Supreme Court of North Carolina did not lend countenance to the violation of the obligations of a contract, when it construed this charter in the light of its own line of decisions extending so far back. If that be true, then the provision of the Court is not tenable, unless it appears from the face of the map that such a line as contemplated by the charter must pass *"through Wilkes County."* We have seen that the line contemplated in the Act of February 3, 1869 (numbered 4 and printed, *ante*), marked out a line, the description of which can be fulfilled by running from the vicinity of Yadkinville through the northern part of Iredell and Alexander to the headwaters of Lewis' Fork, the principal source of the Yadkin River in Caldwell County, and thence up the valley of Wilson's Creek, in Caldwell County, to Coffey's Gap, where one company is now constructing, and two other companies have surveyed lines across the Blue Ridge. Shall it be said, in the face of these facts, that a State Court has interpreted its own statutes, with the purpose of violating the Constitution of the United States by impairing the obligation of a contract, and that a bare majority of the Federal Court of Appeals know so much about the geography and topography of North Carolina as to be able to rest its charge of bad faith on the part of the State Court upon its own contradictory findings as to the geography of the State?

It is properly conceded, in the opinion of the Court, that, in order to support its own conclusion, some legislation must be found, either in the charter or in some valid provision of an amendment thereto, fixing the location of the line beyond Winston-Salem. The appellants contend that such legislation must locate the line *"through Wilkes County,"* while the Circuit Court of Appeals insists that it is sufficient to find legislation, upon which it can find judicially the fact, that a line proposed *"must pass near Wilkes County."* "How near?" Within half mile, or within ten miles?

THE COURT FALLS BACK UPON THE VOID ACT OF 1879 TO FIX THE LEGISLATIVE LOCATION, WHICH IT IS NECESSARY TO DETERMINE BY SOME LEGISLATION.

The Court says (printed record, page 116):

"The Act of February 20, 1879, which was recited in the bonds as authority for issuing them, definitely located this road, running into Wilkes County. It does it by enacting that section 13 of the Convention ordinance shall be amended by adding certain words by making it read when so amended as follows."

The Court then adds section 13 as it purports to be amended, so as to locate another branch of the road "up the valley of the Yadkin by way of Jonesville and Wilkesboro, in the county of Wilkes, to Patterson's Factory, in the county of Caldwell, which branch shall be known as the second division."

Further discussing the Act of February 20, 1879, the Court said (printed record, page 116):

"This act was invalid so far as it attempted to give power to the counties to create a debt, because it was not passed as laws for that purpose are required by the Constitution of North Carolina to be passed, but that invalidity does not affect the sections of the law which deal with other matters.

Rodman v. Washington, 122 N. C., 39 to 42.
Russell v. Heirs, 120 N. C., 180 to 189.
Gamble v. McCrady, 75 N. C., 509.
Bank v. Commissioners, 119 N. C., 214."

If the foregoing proposition is sound law, then on the 19th day of February, 1879, Wilkes County was not empowered to subscribe to the capital stock of the company; but the void Act of the 20th of February, 1879, operated as a grant of power to subscribe by locating a line of railway in section 1, though the highest Courts, State and Federal, have pronounced section 4 of the act invalid.

The authorities cited sustain only the general proposition, that an act may be constitutional in part and unconstitutional in part; but fail to support the extraordinary conclusion, that, where the representatives of a county are unwilling to put their names upon record in favor of a statute allowing the county, in unmistakable terms, to create a debt, as required by Article 2,

section 14, of the Constitution, the Constitution of the State may be evaded by enacting that some railroad company, whose charter already authorizes counties along its line to subscribe to its capital stock, may build a new branch through a designated county, and thus confer the authority without complying with the requirement of the Constitution.

LONG BEFORE THE BONDS WERE ISSUED THE SUPREME COURT OF NORTH CAROLINA HAD DECIDED, IN UNIVERSITY v. HOLDING, 63 N. C. (FILED AT JUNE TERM, 1869) AND IN GALLOWAY v. THE CHATHAM R. COMPANY, 63 N. C., 147, THAT AN AMENDMENT TO A CHARTER, CREATING A NEW BRANCH TO A ROAD IN WHICH THE STATE ALREADY HAD AN INTEREST, DID NOT AUTHORIZE THE STATE TO SUBSCRIBE TO THE CAPITAL STOCK, AS A RAILROAD IN WHICH THE STATE HAD AN INTEREST. IT FOLLOWS, THAT THE CONSTITUTIONAL RESTRICTION AS TO COUNTIES CAN NOT BE EVADED BY ATTEMPTING TO CREATE A BRANCH OF AN EXISTING ROAD IN THE SAME WAY.

The foregoing proposition is sustained by the following extract from those opinions read in connection with the amendments to the charter of the Chatham Railroad Company, construed in said decision and appended to this brief as Exhibits "A," "B," "C," "D," "E," "EE" and "F."

ANALOGY BETWEEN THE CHERAW BRANCH OF THE CHATHAM RAILROAD AND THE WILKESBORO BRANCH OF THE NORTHWESTERN.

The Act of August 3, 1868 (printed as Exhibit "D" to this brief), authorized the Chatham Railroad Company "*to extend their road from the graded terminus at or near Haw River, to the South Carolina State line, near Cheraw, the most approved route to be determined by the directors and president of said road: Provided, that this privilege shall not be construed to relieve*

said company to build their road to the Gulf in Chatham County."

The Act of the 20th of February, 1879 (Exhibit "E," page 17, of the Wilkes printed record), amended section 13 of the charter (page 15 of the Wilkes printed record), so as to make it read as follows (the words added to said section by the act of 1879 being italicised):

"That the company shall have power to construct branches of said road, one of which shall run from the towns of Winston and Salem by way of Mount Airy, in Surry County, to the line of the State of Virginia, *and one of which shall be constructed from the towns of Winston and Salem, up the Valley of the Yadkin, by way of Jonesville and Wilkesboro, in the county of Wilkes, to Patterson's Factory, in the county of Caldwell, which branch shall be known as the second division.*"

It thus appears that the amendment providing for the Cheraw branch authorized the Chatham Railroad Company to construct it as located in the act, while the act of 1879 *required* the construction of the branch therein provided for by way of two designated points, Jonesville and Wilkesboro, to another fixed terminus, Patterson's Factory. The *charter of the* Northwestern had, in terms, purported to empower the company to adopt the line via Jonesville and Wilkesboro and Patterson's Factory, or any other line, as a location of one of its branches, *but did not require, as the act of the 20th of February, 1879, did,* that a branch should be so located under the indefinite authority to run to termini anywhere "in that section." On the other hand the Chatham Company was empowered to run to *"termini at any point or points in the said coal field region,"* and under this general authority might have extended the line from a point above Gulf, as its successor, the Raleigh and Augusta Air Line, subsequently did, to Hamlet, or further south (the whole territory being within what was known as the coal fields region, though still but partially developed); but, like the Northwestern, it asked and obtained specific power to construct a line to a designated point.

THE COURT DECLARED THAT THIS CHERAW BRANCH WAS NOT A PART OF THE ORIGINAL LINE, UPON WHICH WORK HAD BEEN DONE PRIOR TO THE ADOPTION OF THE CONSTITUTION AND IN WHICH, PRIOR TO THAT TIME, APRIL 24th, 1868, THE STATE HAD PECUNIARY INTEREST.

Justice Rodman, delivering a concurring opinion, said, in *Galloway v. Chatham Railroad Company*, 63 N. C., at page 158:

"The Chatham Railroad, *between the termini and the route established by previous legislation, was an unfinished road in the legislative meaning of the phrase; but the road which was to start from one of the termini of the Chatham Railroad, or from some point on it, and run thence to Cheraw, was a road which was unfinished, in the sense that it had never been begun, but not in the sense contemplated by the Constitution, which meant only to include those roads which had been begun, but were unfinished at its adoption.* We are obliged to give this meaning to that phrase in the Constitution, as any other construction would render it totally ineffective, and defeat any policy which it may be supposed it was intended to enforce."

To the same purport is the language of Chief Justice Pearson, at the bottom of page 155, which has already been quoted, where he suggests as a reason moving the Legislature to make unfinished or incomplete roads an exception to the general rule, that it was to prevent a sacrifice of work already done.

Judge Rodman said explicitly what was admitted, *that the Chatham Railroad "between the termini* of the route established by previous legislation was an unfinished road." That road had been graded to a point near Gulf in Chatham County before the Constitution was ratified, and the act to extend the Chatham Railroad, ratified the 3d of August, A. D. 1868 (attached to this brief as Exhibit "D" and referred to on page 148), authorized the company "to extend their road from *the graded terminus at or near Haw River* to the South Carolina State line near Cheraw." The road between Greensboro and

Winston-Salem was not finished till 1873, but it appears from the affidavits of Rufus Harmon and W. H. Watkins (printed record of Wilkes case, pages 82 and 83), that some grading was done on that part of the line in October or November, 1868.

THE STATE COULD NOT HAVE LOANED ITS CREDIT FOR THE CONSTRUCTION OF THE WILKESBORO BRANCH, THOUGH IT APPEARS FROM THE LEGISLATION (THE CHARTER, SECS. 5 AND 8, PAGES 13 AND 14, WILKES PRINTED RECORD, AND THE ACT OF FEB. 3, 1868, ATTACHED TO THIS BRIEF AS EXHIBIT "G") THAT ITS CREDIT WAS GIVEN OR LOANED IN FAVOR OF THE LINE FROM GREENSBORO TO WINSTON-SALEM.

It appears from sections 5 and 8 of the charter, and sections 1 and 2 of the act of February 3, 1869, that the faith of the State was first pledged by the charter to pay $50,000 for the completion of every five miles between Greensboro and Winston-Salem (see secs. 5 and 8, Wilkes printed record, pages 13 and 14), and that subsequently it was provided (in sec. 1 of the Act of February 3, 1869, Exhibit "G," attached to this brief), that "to aid the Mount Airy Division of the Northwestern North Carolina Railroad, from Salem in Forsyth County, to Mount Airy in Surry County, and the first division of said road, from Greensboro to Winston-Salem," when the president and chief engineers should certify to the Governor that $150,000 had been subscribed and five per cent paid in, the Governor should direct the Treasurer to loan the company $20,000 per mile. In sec. 2 of the same act, a similar subscription of the same amount, and upon like conditions, was authorized by the State:

"*For the purpose of aiding in the construction of the Yadkin Valley Division of said railroad, running from Salem and Winston, by way of Lewisville, thence by way of Yadkinville, in the county of Yadkin, or within one and one-half miles*

thereof, thence up the Valley of the Yadkin to the foot of the Blue Ridge in the county of Caswell."

STATE AID WOULD NOT HAVE BEEN GRANTED TO THE BRANCH BY JONESVILLE TO WILKESBORO IF IT HAD BEEN APPLIED FOR UNDER THE RULE LAID DOWN IN GALLOWAY v. RAILROAD, *SUPRA*.

If, after the passage of the Act of February 3, 1869, State aid had been asked for a new branch, located by the company under the general power in the charter to build branches and not under an amendment to the charter requiring such location, from Winston-Salem via Jonesville and Wilkesboro to Patterson's Factory, the Supreme Court would have felt constrained to follow the ruling in *Galloway v. Railroad*, that this was not a part of an unfinished road, but a new line, because any other construction would defeat the policy of the State in imposing restrictions. (See 63 N. C., page 158.)

To concede the right of the State to have subscribed and paid $20,000 per mile on a branch so located under the authority given in the original charter, would be equivalent to admitting that the company was empowered to locate any line, in any direction, with Winston-Salem as a centre, to the circumference of a circle described by a radius from said centre not long enough to extend beyond the borders of the State, and to bind the State by its contract to give pecuniary aid. Such a construction would manifestly defeat the policy of the State by opening the way to evade all restrictions, either upon the legislative branch of the government or its municipal agencies, in creating debts to build railroads. If such a branch located between February 3, 1869, and February 20, 1879, would have been a new road, and not an unfinished road, under Article V, section 4, of the Constitution, it would follow that it would not have been an incomplete road, but one which had not been begun in construing the Act of 1869. (The Code, secs. 1996 to 2000.)

On the other hand, if, as we think is clearly the correct view, the Wilkesboro branch was, like the Mount Airy division, sim-

ply a branch, but differing from the Mount Airy branch in that the Act of 1879 fixed its location, just as the Act of August 3, 1868 (Exhibit "D," hereto attached), which marked out a new terminus for the Chatham road, was construed to have created a new line distinct from the Chatham road, though the Chatham Railroad Company was authorized by a charter accepted before the 24th of April, 1868, to extend its road to termini anywhere within the coal field region, and the State was bound by its contract to lend its aid in building to such termini. The charters of both the Chatham Railroad and the Northwestern North Carolina Railroad Company were accepted before the Constitution took effect in 1868, and constituted contracts of the State not subject to alteration or repeal by the Legislature, under Article VIII, section 1, of the Constitution of 1868.

THE CONTRACT WITH THE NORTHWESTERN NORTH CAROLINA RAILROAD COMPANY RECOGNIZED BY THE LEGISLATURE.

Under the provision of chapter 100, Acts of 1869-'70, ratified March 22, 1870 (Exhibit "H," hereto attached), the charter was so amended as to permit the company to issue mortgage bonds constituting a first lien upon its franchise and property, and to provide that the mortgages theretofore executed by the company to secure the payment of State aid bonds should subside into a second mortgage. (See Exhibit "H," hereto attached.)

Subsequently the company was permitted, by Act of March 31, 1871, to consolidate with any connecting line. (See Exhibit "I," hereto attached, and also Laws of 1870-'71, chap. 178.)

Still later, under the provision of the act ratified January 3, 1872, the State accepted the return of its bonds by the company and agreed to cancel and surrender the mortgages executed by the Company to secure the State "whenever the president of the said Northwestern North Carolina Railroad Company shall certify to the Treasurer of the State of North Carolina *that this act had been accepted as an amendment of the charter of said company, said Treasurer shall forthwith cancel both of*

the mortgages aforesaid and deliver the same so cancelled, etc." The State thus recognized its contractural relations existing between it and the company.

IT CAN NOT BE SUCCESSFULLY CONTENDED THAT THE LINE BY JONESVILLE AND WILKESBORO IS THE MAIN LINE FOR SEVERAL REASONS.

First, because section 2 of the Act of February 3, 1869 (attached as Exhibit "G"), located the *"Yadkin Valley division, running from Winston-Salem by way of Lewisville, thence by way of Yadkinville, in the county of Yadkin, or within one and one-half miles thereof, thence up the valley of the Yadkin to the foot of the Blue Ridge, in the county of Caldwell,"* and marked it out as the main line, running towards the northwestern boundary of the State (as contemplated in section 1 of the charter, Wilkes printed record, page 12), by providing for its construction by State aid. *This act has never, directly or by implication, been repealed in so far as it locates the division extending to the Blue Ridge,* while subsequent legislation recognized it as a part of the charter, by prohibiting the surrender of mortgages executed under it till the State Treasurer should be assured of the adoption by the company of the modifying act. (See Exhibit "J," section 1, chapter 5, Act of 1871-'72, hereto attached.)

Second, because the line from Winston-Salem to Lewisville, and thence to Yadkinville, would cross to the south side of the Yadkin River, a distance of more than ten miles, and in running thence to the headwaters of the Yadkin River at the foot of the Blue Ridge, would be at all points further from the line of the Wilkesboro branch than the Mount Airy line is from the road from Winston to Jonesville, and will extend to a point at the foot of the Blue Ridge and further west than Patterson. *We submit confidently the statement that there is no evidence whatever to show that the road to Wilkesboro was ever marked out by the State, or by the company, or designated as the main line, while, on the other hand, the State marked the line by way of Yadkinville as that to which it would give pecuniary aid, and the company accepted that proposition as an amendment to its*

charter, which amendment has never been repealed. If the appellees contend that the line by Yadkinville has never been built, and is therefore abandoned, we answer that the right to extend the Wilkesboro branch to Patterson's Factory is not to be deemed abandoned, because it has not yet been exercised.

Third, because, when the Legislature amended the charter by *requiring* that a branch should be constructed by Jonesville and Wilkesboro, it proceeded, in the same act (of February 20, 1879), to clothe the counties along the line marked out, *in terms*, with power to subscribe, just as if creating a new and distinct line. In determining what construction should be given to the Act of February 20, 1879, the Court, under the rulings in North Carolina, must respect the views of the Legislature as indicated by the terms of that statute.

In an opinion given by the majority of the Supreme Court of North Carolina, at the request of the Governor, in reference to the tenure of office of two members of the Court, the following language was used:

"Courts are extremely reluctant likewise to disturb or modify any construction that has been given by the Legislature to statutes or provisions of constitutions since their enactment. Where business relations have been heretofore adjusted or rights to offices have been recognized as settled by the legislative sanction so given to a particular construction of doubtful language, courts are even more averse to disturb or overrule the principle which has been accepted and acted upon by the public, because it had the approval of the lawmakers, whose power to enact or modify statutes is limited only by the Constitution, and whose interpretation of the organic law is entitled to such profound respect that it will be disturbed by the courts only on the weightiest consideration." 114 N. C., at page 925.

Fourth, the amendment to the charter, marking out the main line to the west by way of Lewisville and Yadkinville, has become a part of a contract under the doctrine first established in the Dartmouth College case, and can not be modified except by act of the Legislature, approved by the stockholders of the company in a lawful meeting. Before the adoption of the Constitution in 1868, the Legislature had reserved no power to amend

the charters of private corporations, and hence that doctrine applied to all charters granted before the 24th of April, 1868.

Replying to a request for advice in the House of Representatives as to whether an amendment to the charter of the North Carolina Railroad, granted in 1848, would become operative upon the approval of the Board of Directors of the company, the Court said:

"The provisions in section 6 of the bill submitted to us, which makes the validity of a lease dependent upon its acceptance by the board of directors, would be an amendment of the charter transferring power from the stockholders, and invalid unless accepted by the stockholders in general or special meeting assembled."

120 N. C., at pages 624 and 625.

The recitation in subsequent amendments to the charter show that the amendment numbered 4, *ante*, and describing the proposed line by Lewisville and Yadkinville was made valid by being accepted by the stockholders. The foregoing extract from the Letter of Advice from the Supreme Court to the Legislature (pages 624, 625), shows that where charters were granted, as in this case, before the adoption of the new Constitution reserving to the Legislature the right to alter charters, the charters were held to be contracts which could not be altered without the assent of the company to the amendment proposed by the Legislature.

Attention is called to the amendments to the charter of the Chatham Railway, referred to in *Galloway v. Railroad* and *University v. Holding, supra.*

A. C. AVERY.

APPENDIX.

EXHIBIT "A."

[Chapter 129, Laws 1860-'61.]

An act to incorporate the Chatham Railroad Company.

SECTION 1. Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, that a company is authorized to be formed, with a capital stock of eight hundred thousand dollars, to be divided into shares of one hundred dollars each, to be called and known as the "Chatham Railroad Company," for the purpose of building and constructing a railroad with one or more tracks, to be used with steam and other motive power, from the coal fields in the county of Chatham through said county to Raleigh, or some point west of Raleigh not exceeding twelve miles, the nearest and most practicable route; and such company when formed as hereafter directed, shall have power to receive, possess, own and transfer real and personal property, to have common seal, and to pass such by-laws, not inconsistent with the laws of this State, as may be necessary to carry out the object of the corporation; shall be capable in law of suing and being sued, pleading and being impleaded, and shall have and enjoy all the rights of other corporate bodies under the laws of this State; to condemn land for right-of-way, and all other purposes necessary to carry into effect the purposes of said company; and shall generally have and possess all the rights, privileges and immunities, and be subject to the limitations and restrictions of corporate bodies in this State; and shall have the exclusive right to transfer and carry persons, produce, merchandise and minerals on and along such railroad at such prices as they may fix.

SEC. 2. Be it further enacted, that for the purpose of creating the capital of such company, John C. Stone, Henry A. London, Frank Page, K. P. Battle, O. A. Taylor, T. D. Hogg,

R. S. Tucker, W. P. Taylor William Hogan Jones and Elias Bryan are hereby appointed Commissioners whose duty it shall be, as soon after the passage of this act as may be, to appoint such Commissioners to open books of subscription at such places and at such times as to them shall seem best, and under such rules and regulations as they may prescribe.

SEC. 3. Be it further enacted that whenever the sum of one hundred thousand dollars shall have been subscribed to the capital stock of said company by solvent subscribers, it shall be the duty of the Commissioners aforesaid to call a general meeting of the stockholders, after giving such notice as to them shall seem sufficient, and at such times and places as they shall determine; and at all general meetings of said stockholders not less than a majority of all the stock subscribed shall constitute a quorum for the transaction of business, and said stockholders, when so met in general meeting, shall have power, and it shall be their duty, to elect a president and five directors for said company; and in electing such president and directors, and in enacting such by-laws as may be necessary, each share of stock represented, either in peron of by proxy, shall be entitled to one vote: *Provided*, if a majority of such stockholders shall not attend said first general meeting, such as do attend and are present may adjourn from time to time until a majority shall appear.

SEC. 4. Be it further enacted that it shall be the duty of said stockholders, at their first general meeting, to prescribe the manner and time in which payments of stock on the subscription books shall be made: *Provided*, not more than one-half of said subscription shall be called for in one year after said first general meeting.

SEC. 5. Be it further enacted, that it shall be the duty of the president and directors of said company to appoint a treasurer, who shall remain in office such length of time as the company in their by-laws shall determine; and said president and directors shall remain in office one year, and until others are chosen, and shall have a general direction and management of the affairs of said company, and shall appoint some suitable person as engineer whose duty it shall be to make the necessary sur-

veys for the location of said railroad, and furnish the president and directors with such survey or surveys, and estimates of the cost; said directors shall have power to fill any vacancy that may occur in their board, and, in the absence of the president, to elect one for the time; they shall also appoint a secretary, whose duty it shall be to keep a fair and correct record of the proceedings of said board, and of all the proceedings of the stockholders in general meeting, in a book to be provided for that purpose.

SEC. 6. Be it further enacted, that the president or Board of Directors shall at least once a year make a full report on the state of the company and its affairs to a general meeting of the stockholders, and oftener, if required by any by-law of the company; and also (call) a general meeting of the stockholders whenever they may deem it expedient, and the company may provide in their by-laws for occasional metings being called, and prescribe the mode thereof.

SEC. 7. Be it further enacted, that all persons, the Justices of the County Court, or the authorities of any incorporation, shall have full power and authority to subscribe to the capital stock of said company to the amount they shall be authorized to do by the inhabitants of said county or any incorporated town, or the proper authorities of any corporation, to the amount they shall be authorized to do by the inhabitants of said county or town; and they (may) issue bonds or other evidences of debt to enable them to borrow money to pay such subscription; the said subscription to be made by any agent or agents of such county, town or corporation properly authorized by them to make the same, when so made, shall be binding on such county, company or corporate body in the same manner and to the same extent that it is on the individual subscribers, and such body corporate or company, or county shall be represented in all general meetings of the stockholders.

SEC. 8. Be it further enacted, that if the capital stock of said company, as authorized by this charter, be insufficient to carry out the purposes of the same, it may be increased by said company to one million two hundred and fifty thousand dollars.

SEC. 9. Be it further enacted, that said company may begin

the construction of said road at any point on the line of location according to their discretion, and that for any portion of said road actually constructed the said company shall be entitled to all the privileges of this act into and over such part so constructed.

SEC. 10. Be it further enacted, that this act shall be in force from its ratification. (Ratified the 15th day of February, 1861.)

EXHIBIT "B."

An ordinance in addition to and amendment of an act of the General Assembly, ratified the 15th day of February, 1861, entitled "An act to incorporate the Chatham Railroad Company," and to repeal an act supplemental thereto, ratified the 23d day of February, 1861.

1. Be it ordained by the delegates of the people of North Carolina in Convention assembled, and it is hereby ordained by the authority of the same, that section first of an act of the General Assembly, ratified the fifteenth day of February, one thousand eight hundred and sixty-one, entitled "An act incorporating the Chatham Railroad Company," be amended by inserting after the words "from the coal fields in the county of Chatham, through said county," the words "connect with the North Carolina Railroad at," so as to make the section read "to connect with the North Carolina Railroad at Raleigh, or some point west of Raleigh, not exceeding twelve miles."

2. Be it further ordained, that the *proviso* in section four of said act of the General Assembly be stricken out.

3. Be it further ordained, that an act of the General Assembly, ratified on the 23d day of February, one thousand eight hundred and sixty-one, entitled "An act supplemental to an act passed at the present session of the General Assembly, entitled 'An act to incorporate the Chatham Railroad Company,'" be and the same is hereby repealed and abrogated.

4. Be it further ordained, that all such solvent corporations as may or shall subscribe to the capital stock of the said Chatham Railroad Company may make their bonds payable to the Public Treasurer of the State of North Carolina for the amount of their subscriptions to said capital stock, and no more; which said bonds are to be signed by the presidents and under the seals respectively of said corporations, and made for any sums not under five hundred dollars each, to bear interest at the rate of six per cent per annum, which interest is to be paid semi-annually, to-wit, the first Monday in January and July in each and every year; and the principal of said bonds to be made payable twenty years after date; and these bonds, so authorized to be made, may be deposited with the Public Treasurer of the State, who shall then issue and deliver to the several corporations so subscribing and depositing their bonds as aforesaid, the coupon bonds of the State of North Carolina, to the amount of their subscriptions respectively, and made for the sums of five hundred dollars and one thousand dollars, to bear interest at the rate of six per cent per annum, which interest is to be paid semi-annually, on the first Monday in January and July in each and every year, and the principal of said bonds to be made payable twenty years after date: *Provided,* that said bonds shall not exceed, in the aggregate, the sum of eight hundred thousand dollars: *And provided also,* that said Chatham Company shall execute and deliver to the Governor of the State of North Carolina a deed of mortgage, under the seal of said company, wherein and whereby shall be conveyed to the Governor and his successors in office, for the use and benefit of the State, all the estate, both real and personal, belonging to said company, or in any manner pertaining to the same, conditioned for indemnifying and saving harmless the State of North Carolina from the payment of the whole or any part of the bonds of the State authorized by this ordinance to be made by the Public Treasurer, and delivered to the several corporations subscribing as aforesaid to the capital stock of said Chatham Railroad Company. In addition to the deed of mortgage hereinbefore required to be executed and delivered by the Chatham Railroad Company, the State of North Carolina shall, by this ordinance,

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have a lien upon the estate, both real and personal, of said company, which they may now have or may hereafter acquire, to secure the principal and interest of the bonds of this State authorized to be issued as aforesaid.

5. Be it further ordained, that said bonds of the State, so made by the Public Treasurer, shall be received by the said Chatham Railroad Company in payment of subscriptions made as aforesaid by such corporations to the capital stock of said Chatham Railroad Company.

6. Be it ordained, that said corporations so subscribing and depositing their bonds as aforesaid with the Treasurer of the State, shall be allowed to redeem their bonds at any time before maturity, in the currency of the State, on giving thirty days' notice to the Treasurer of this State of their intention so to do.

7. Be it further ordained, that the said railroad may *be constructed with termini at any point or points in the said coal fields region that the stockholders in said company may agree upon, with the approbation of the Board of Internal Improvements.*

8. Be it further ordained, that the corporate authorities of incorporated towns subscribing to the capital stock of said Chatham Railroad Company, in order to provide for the payment of their subscriptions, and of the principal and interest of bonds for that purpose by them issued, shall have authority to lay and collect taxes from all subjects which, under the charters of said towns, are taxable.

9. Be it further ordained, that the solvency of such corporations as may desire to subscribe to the capital stock of said Chatham Railroad Company shall be judged of by the Board of Internal Improvements.

10. Be it further ordained, that all laws and parts of laws, all acts and parts of acts, inconsistent with the provisions of this ordinance are hereby repealed and abrogated.

(Ratified the 30th day of January, 1862.)

EXHIBIT "C."

(Ordinance of Convention 1868, Chapter 19.)

An ordinance to amend the charter of the Chatham Railroad Company.

SECTION 1. Be it ordained by the people of North Carolina in Convention assembled, that to enable the Chatham Railroad Company to finish its road, the Public Treasurer is hereby authorized and directed to deliver to the president and directors of the said railroad company the coupon bonds of the State to an amount not exceeding twelve hundred thousand dollars ($1,200,000), signed by the Governor, countersigned by the Public Treasurer, and sealed with "the Great Seal of the State," bearing six per cent interest, the principal payable at the end of thirty years from the date thereof, and the coupons of interest payable semi-annually, in such form as the Public Treasurer may direct, to be made payable at such time and place as may be agreed upon by the Public Treasurer.

SEC. 2. Be it further ordained, that before the Public Treasurer shall deliver any of said bonds hereby authorized, the said Chatham Railroad Company (shall deposit) with the Public Treasurer the coupon bonds of said company for the same amount, and bearing the same interest and date, the principal and coupons payable at the same time and place as those of the State hereinbefore directed to be issued and paid over to the Chatham Railroad Company, and to secure the principal and interest of by the Chatham Railroad Company, the State of North Carolina shall, by this ordinance, have a lien upon all the estate of said company, both real and personal, which they may now have or may hereafter acquire, between the city of Raleigh and the Gulf, the terminus of said railroad in the coal fields, including that at both points, together with all the rights, franchises and powers thereunto belonging or appertaining, or that may hereafter belong or appertain to said company which lien shall be more effectually secured by a first mortgage duly executed by said company to the State, and registered in the

Register's office in the counties of Wake and Chatham, and in case of failure of said company to pay the semi-annual interest on its bonds for twenty-four months after such interest shall become due, or to pay the principal of said bonds for twelve months after their maturity, the Board of Internal Improvements, for and in behalf of the State, may enter upon and take possession of all the property hereinbefore specified and dispose of the same by sale so as to protect the State.

SEC. 3. Be it further ordained, that the Chatham Railroad Company may, at any time before maturity, take up the bonds of the company deposited with the Public Treasurer by substituting in lieu thereof coupon bonds of the State, or other indebtedness of the State.

SEC. 4. Be it further ordained, that the State shall have the privilege, at any time within eight years from the passage of this ordinance, to subscribe stock in said company to the amount of six hundred thousand dollars ($600,000), in shares of one hundred dollars ($100.00) each, and upon certificate of stock being issued to the State by said company for the same, to surrender the bonds of said company which had previously been delivered to the State under the provisions of this ordinance.

SEC. 5. Be it further ordained, that this ordinance shall take effect and be in force from and after its passage.

Ratified this 11th day of March, A. D. 1868.

CALVIN J. COWLES, *President.*

T. A. BYRNES, *Secretary.*

EXHIBIT "D."

(Private Laws of Special Session of 1868, of the General Assembly of North Carolina, Chapter 7.)

An Act to extend the Chatham Railroad.

The General Assembly of North Carolina do enact:

SECTION 1. That the Chatham Railroad Company is hereby authorized to extend their road from the graded terminus at or near Haw River, to the South Carolina State line, near Cheraw, the most approved route to be determined by the presi-

dent and directors of said road: *Provided*, that this privilege shall not be construed to relieve said company from the obligation to build their road to the Gulph in Chatham County.

SEC. 2. The Chatham Railroad Company shall not expend any money on that portion of the line south of the intersection with the Western Railroad, except for the survey and location of the same, until that portion of its line between its junction with the North Carolina Railroad and its intersection with the Western Railroad is completed and in operation, with sufficient rolling stock and suitable depot, freight and engine buildings and machine shops, nor until the obligation expressed in *proviso* in section one of this act shall have been discharged.

SEC. 3. This act shall go into effect and become a part of the charter of the Chatham Railroad Company as soon as accepted by a majority of the stockholders of said company at any regular or called meeting thereof, and such acceptance shall be certified to the Governor of the State by the president of the company, under the seal of the corporation.

Ratified the 3d day of August, A. D. 1868.

EXHIBIT "E."

(Private Laws of Special Session of 1868, of the General Assembly of North Carolina, Chapter 14.)

An Act to amend the charter of the Chatham Railroad Company.

The General Assembly of North Carolina do enact:

SECTION 1. That to enable the Chatham Railroad Company to finish their road, the Public Treasurer is hereby authorized and directed to deliver to the president of the said railroad company, the coupon bonds of the State, of one thousand dollars ($1,000) each, to an amount not exceeding two million dollars ($2,000,000), signed by the Governor, countersigned by the Public Treasurer, and sealed with the Great Seal of the State, bearing six per cent interest, the principal payable at the end of thirty years from the date thereof, and the coupons of interest payable semi-annually in such form as the Public Treasurer

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may direct, principal and interest payable at such time and place as he may prescribe.

SEC. 2. Before the Public Treasurer shall deliver any of the said bonds hereby authorized, the President of said Chatham Railroad Company shall deposit with the Public Treasurer the coupon bonds of the company, signed by him and sealed with the company's seal for the same amount, and bearing the same interest and date. The principal and coupons payable at the same time and place as those of the State hereinbefore directed to be issued and paid over to the said company, and to secure the principal and interest of said bonds, issued by the company, the State of North Carolina shall have, by this act, a lien upon all of the estate of the same, real or personal, which they may now have, or may hereafter acquire, between the point of intersection with Western Railroad and the South Carolina State line, including that at both points, together all the rights, franchises and powers thereunto belonging, or that may hereafter belong to said company, in respect of that portion of their line, which lien shall be more effectually secured by a first mortgage duly executed by said company to the State, and registered in the Register's office of the county of Wake and in the office of the Secretary of State, and in case of the failure of said company to pay the semi-annual interest on their bonds for twenty-four months after such interest shall become due, or to pay the principal of said bonds for twelve months after their maturity, the Board of Internal Improvements, for and in behalf of the State, may enter upon and take possession of all the property hereinbefore specified and dispose of the same by sale, so as to protect the State.

SEC. 3. The Chatham Railroad Company may, at any time before maturity, discharge the bonds of said company deposited with the Public Treasurer by substituting in lieu thereof coupon bonds of the State, or other indebtedness of the State, or payment in national currency.

SEC. 4. That any railroad company within this State shall be at liberty to take or purchase stock in, or lend money to, or purchase bonds of this or any other railroad company in this or any adjoining State.

SEC. 5. This act shall be in force from and after its ratification.

Ratified the 15th day of August, A. D. 1868.

EXHIBIT "EE."

CHAPTER VII.

An Act to re-enact and confirm certain acts of the General Assembly authorizing the issue of State bonds to and for certain railroad companies.

WHEREAS, Doubts have been raised as to the validity of bonds of the State issued to and for certain railroad companies under acts whose titles are hereinafter recited; and whereas, it is the purpose of this General Assembly to place the validity of such bonds beyond question; now, therefore,

The General Assembly of North Carolina do enact:

SECTION 1. That an act entitled "An act to amend the charter of the Williamston and Tarboro Railroad Company," ratified the seventeenth day of August, *Anno Domini* eighteen hundred and sixty-eight, and an act entitled "An act to amend the charter of the Western North Carolina Railroad Company," ratified the nineteenth day of August, *Anno Domini* eighteen hundred and sixty-eight, and all the provisions thereof be and the same are hereby re-enacted and in all things confirmed, and they are hereby constituted part of this act; and all bonds of the State heretofore made and issued to and for the railroad companies and for the purposes in said act specified, and in pursuance of the same, are hereby ratified and made good to all intents and purposes as if issued under and in pursuance of the provisions of this act.

SEC. 2. That on the surrender of any of the bonds heretofore issued under and by virtue of any one of said acts, the Treasurer is hereby authorized and required to issue and substitute new bonds of the State, of like tenor and date, executed in like manner and in all respects similar, for such bonds so surrendered, except that such new and substituted bonds shall be

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issued and purport to be issued under and by virtue of this act, and the bonds so surrendered shall be burnt by the Treasurer in the presence of the Governor and Auditor, who shall cause to be made and sign a certificate specifying the number and dates of such bonds so burnt, and the acts under which the same were issued, and the Treasurer shall report such action and certificate to the General Assembly.

SEC. 3. In order to provide for the payment of the interest that may from time to time accrue upon such bonds so issued under said acts, and the bonds to be issued and so substituted under this act, there shall be annually levied and collected a special tax of one-thirtieth of one per cent on the taxable property of the State to pay the interest that has accrued and may, from time to time, accrue on the bonds so issued and so to be issued to and for the said Williamston and Tarboro Railroad Company, and a like special tax shall be annually levied and collected of one-twentieth of one per cent on all taxable property of the State to pay the interest that has accrued and may, from time to time, accrue on the bonds so issued and so to be issued to and for and on account of the said the Western North Carolina Railroad Company.

SEC. 4. The Public Treasurer is hereby directed, whenever the president of the Chatham Railroad Company shall certify that the grading of the road between Cheraw, in South Carolina, and the Gulf, or some other point on the Chatham Railroad, between Raleigh and the Gulf, has been let to contract, to subscribe to the capital stock of said company two million dollars in behalf of the State, which subscription shall be paid by delivering to the president of said company coupon bonds of the State at par of the denomination of one thousand dollars, dated October first, eighteen hundred and sixty-eight, and payable in thirty years thereafter, bearing six per cent interest, payable semi-annually, principal and interest payable in the city of New York, said bonds to be signed by the Governor, countersigned by the Treasurer, and sealed with the "the Great Seal of the State," and issued under the provisions of chapter ninety, Revised Code: *Provided,* that said bonds shall only be issued on the surrender of a like amount of bonds of the State

heretofore issued under an act to amend the charter of the Chatham Railroad Company, ratified the fifteenth day of August, eighteen hundred and sixty-eight. On which surrender the same amount of bonds delivered by said company to the State under the said act shall be cancelled. Said subscription shall be preferred stock, and pay a dividend of six per cent before any dividend shall be declared on the other stock.

SEC. 5. In order to provide for the payment of the interest which may accrue on the bonds issued as above mentioned, there is hereby and shall be annually levied and collected a special tax of one-twentieth of one per cent on the taxable property of the State, collectable and payable into the Treasury as other public taxes.

SEC. 6. In all meetings of stockholders of said company the State shall, for and in behalf of its stock, be entitled to a vote equal to one-third of that cast by individual stockholders, and all the officers of said company shall be elected by the stockholders as heretofore.

SEC. 7. The capital stock of said Chatham Railroad Company is hereby increased to three million two hundred thousand dollars.

SEC. 8. This act shall be in force from its ratification.

Ratified the 18th day of December, A. D. 1868.

EXHIBIT "EE."

CHAPTER CLXXII.

An act to enable the Chatham Railroad Company to complete its road.

SECTION 1. That for the purpose of supplying funds to enable the Chatham Railroad Company to complete and equip its road, the said company shall have power to borrow money, by the issue of bonds or other evidences of debt, authenticated in such manner as the president and directors of said company may deem best, in sums not less than five hundred dollars, at a rate of interest not exceeding eight per cent, principal and interest payable at such time and place as said president and di-

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rectors may select, the bonds so issued not to exceed two millions of dollars.

SEC. 2. To secure the payment of these bonds and other evidences of debt issued as aforesaid, and the interest thereon, the said Chatham Railroad Company may execute and deliver mortgage deeds or deeds in trust, signed by the president and countersigned by the Secretary of said company, conveying its franchise and property, including its road-bed, superstructure, choses in action, and real and personal estate of whatever kind, to the holder of said bonds, or to such parties as said president and directors my select, in trust for them, and the deeds so executed and registered in the county of Wake shall have priority over any lien or other claim held by this State on the subject matter conveyed, it being the intent and meaning of this act that the State shall be in the position and have the rights of a second mortgage, subordinate to the liens created by the mortgage or trust deeds aforesaid: that before the said Chatham Railroad Company shall make or sell any portion of the first mortgage bonds authorized by sections one and two of this act, they shall deliver to the Public Treasurer a second mortgage upon all their estate, both real and personal, which they may now have, or may hereafer acquire, between the city of Raleigh and the terminus of said railroad to the South Carolina line, at or near Cheraw, South Carolina, said second mortgage bonds to be in all other respects the same as the first mortgage bonds now held by the State, bearing the same interest and payable in the same manner; and the president of the said Chatham Railroad Company shall also deposit with the Public Treasurer the sum of one hundred and forty-four thousand dollars of first mortgage bonds, to be applied to the payment of the interest on the second mortgage bonds.

SEC. 3. Any county along the line of the said Chatham Railroad may subscribe to the capital stock of the company, to such amount as a majority of the Commissioners of said county may determine, subject to the approval of a majority of the qualified voters of the county; and said Commissioners, in order to pay the said subscription, shall have power to issue bonds or other evidences of debt, at a rate of interest not to exceed eight per cent per annum; said bonds to be issued in such manner

and form, payable at such time and place, and authenticated in such manner as they may determine.

SEC. 4. In order to pay the principal and interest of the bonds issued as aforesaid, the Commissioners of the county, subscribing as above mentioned, shall levy and collect annually, in such manner as is directed by law in case of taxes for other county purposes, a tax sufficient to pay the annual interest, and they may levy and collect a further tax to be used in extinguishment of the principal, or else to be invested as a sinking fund for the ultimate redemption of the principal.

SEC. 5. No subscription shall be made by the Commissioners of any county as above mentioned until the question of approval or disapproval of such subscription, the issue of bonds or other evidences of debt, and the authority to levy taxes to pay the interest and provide for payment of the principal of the bonds, shall be submitted to the qualified voters of the county, and shall be approved by a majority of those voting. The election shall be held at the usual places of voting. Thirty days' notice shall be given by advertisement in at least two newspapers published in the county, if there be any, at the court-house door, and at each of said election precincts. If there be no newspapers published in the county, then the advertisement shall be published in some newspaper having, in the opinion of the Commissioners, the widest circulation in the county. The advertisement shall contain a copy of this act, as well as the amount proposed to be subscribed by the Commissioners, and the amount of bonds or other evidences of debt proposed to be issued. Those approving the proposition shall deposit in the ballot box ballots with the printed or written word "Approved"; those disapproving the same shall deposit ballots with printed or written words "Not Approved"; and if a majority of said voters shall vote "Approved," they shall be deemed to ratify and approve the subscription and debt proposed to be made and the tax proposed to be levied.

SEC. 6. The Commissioners of any county proposing to subscribe for stock as aforesaid, shall have authority to take all measures consistent with this act, and the laws of the State, for registration of voters, holding the election and returns of the re-

sult of the same; and if said subscription be approved, they shall have power to take all measures proper for carrying the same into effect.

SEC. 7. The Chatham Railroad Company shall have power to receive subscriptions to its capital stock, payable in real or personal property at such valuation as may be agreed on between the company and the subscriber. It shall not be necessary for the wife to join her husband in the conveyance of any right-of-way or other interest in real estate of the husband, for any purpose to said company in order to pass her right of dower or other material right therein.

SEC. 8. The said company shall have power to take all such securities and mortgages of real and personal estate as it may deem proper to secure the faithful performance of contracts for the construction and repair of said road, and the buildings and other things incident thereto.

Ratified the 10th day of April, A. D. 1869.

EDWARDS & BROUGHTON, PRINTERS AND BINDERS, RALEIGH.